

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF INDIANA)	
BELL TELEPHONE COMPANY, INCORPORATED,)	
D/B/A SBC INDIANA PURSUANT TO)	
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS)	CAUSE NO. 41657
FOR COMMISSION REVIEW OF VARIOUS)	
SUBMISSIONS OF SBC INDIANA TO)	
SHOW COMPLIANCE WITH SECTION 271(C) OF)	
THE TELECOMMUNICATIONS ACT OF 1996)	

"SECTION 271" REPORT AND RECOMMENDATION

OF

THE INDIANA UTILITY REGULATORY COMMISSION

TO

THE FEDERAL COMMUNICATIONS COMMISSION

WC DOCKET NO. 03-167

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I. Procedural History

1. On February 2, 2000, Indiana Bell Telephone Company Incorporated ("SBC Indiana") initiated the above-captioned petition for the Commission to review its prospective application to provide intrastate, interLATA telecommunications services in the state of Indiana. This is a proceeding under Section 271 of the Telecommunications Act of 1996 ("TA-96") to evaluate whether SBC Indiana should be allowed to offer the requested services. Section 271 sets the criteria and process by which a Regional Bell Operating Company ("RBOC") such as SBC Indiana will be allowed to offer in-region, interLATA services. SBC Indiana seeks interLATA entry under 47 U.S.C. Section 271(c)(1)(A), or "Track A" of Section 271. Track A approval requires the BOC to show the following: that it has entered into an interconnection agreement with a facilities-based competitor; that it meets the 14-point competitive checklist in Section 271(c)(2)(B); that it will enter the interLATA market consistent with the terms of Section 272; and that entry is "consistent with the public interest, convenience and necessity."¹ SBC Indiana's application requested the IURC to utilize the following three-phase approach: approve a regional independent third-party test of SBC's operations support system ("OSS") and appropriate performance measures (Phase 1); review checklist compliance, including a "draft application," generic interconnection agreement and performance assurance plan (Phase 2); and review final OSS test report and actual performance results (Phase 3).

2. The first phase of this docket addressed the development of OSS performance measures, benchmarks, and related business rules, and addresses the procedure for the OSS testing. The authorization to begin the test was contained in an Order issued in this Cause on March 19, 2001. Pursuant to the Master Test Plan ("MTP"), BearingPoint began active operational testing activities for the State of Indiana in early 2001 and has completed the Processes and Procedures Review ("PPR") and Transaction Verification and Validation ("TVV") portions of the test. BearingPoint is also conducting a Performance Metrics Review ("PMR") by testing SBC's collection, measurement, and reporting of commercial results for those functions. In addition, the test included a verification of compliance with "A-AA" issues.

3. On February 28, 2003, BearingPoint submitted an interim test report and, on May 12, 2003, BearingPoint submitted its final PPR and TVV test report and an updated version of the February 28 PMR report. The PMR section of the test is ongoing. SBC Indiana recognizes that test activities will need to proceed on a separate track after the test report is filed and potentially after SBC Indiana has filed its Section 271 application with the FCC. SBC Indiana committed to providing assistance to BearingPoint and the Commission in those efforts and to that end proposed a compliance plan process, similar to that proposed in Michigan and Illinois. SBC Indiana filed these plans on March 18, 2003. With respect to the A-AA issues, BearingPoint has

¹ Application of Michigan Pursuant to Section 271 of the Telecommunications Act of 1934, as amended, to Provide In-Region Inter-LATA Services in Michigan, ¶¶ 8, 9 (1997) (Michigan 271 Order).

completed the test as to those items that are verifiable through the test process. On March 18, 2003, SBC Indiana made its filing demonstrating compliance with "A-AA" issues that were not verified by BearingPoint.

4. With respect to the PMR section of the test, SBC Indiana engaged Ernst & Young, LLP ("E&Y") to conduct separate, independent audits of SBC Indiana's implementation of Indiana performance measurement business rules and the controls and reliability of its performance measurement reporting systems and processes, which are components of the PMR section. E&Y issued its initial audit report on February 13, 2003, and SBC Indiana filed the E&Y Report on March 3, 2003. On March 14, 2003, SBC Indiana filed three (3) consecutive months of actual performance results with the supporting affidavit of James D. Ehr, which addressed the results and the E&Y initial audit report. E&Y issued its final audit report on April 16, 2003, and SBC Indiana filed the final E&Y report on May 12, 2003.

5. On September 26, 2002, SBC Indiana filed its Phase 2 Checklist Informational Filing. Based on the Commission's October 31, 2002 Process Order establishing a procedure for going forward with this proceeding, SBC Indiana supplemented its September 26, 2002 filing with a comprehensive, detailed report indicating the arbitration agreement(s), tariff(s), or catalog that it will use to support its Section 271 application and to demonstrate compliance with applicable statutes, FCC and IURC orders and rules, and prior commitments that it has made. SBC Indiana made this filing on November 18, 2002. SBC Indiana has also filed, on March 27, 2003, SBC Indiana's Proposed Line Splitting Compliance Plan and, on April 10, 2003, a Revised Line-Splitting Compliance Plan.

6. On December 11, 2002, WorldCom, Inc., AT&T, the OUCC, Z-Tel Communications, Inc. and FBN Indiana, Inc. filed Comments on SBC Indiana's Draft Section 271 Application. On December 17, 2002, McLeodUSA moved for leave to join the initial Comments of WorldCom, Inc., which was granted. On January 8, 2003 SBC Indiana filed its Reply Comments to the CLEC and OUCC filings.

7. The Commission issued various docket entries relating to its consideration as to other matters. Based on these, BearingPoint and E&Y made presentations regarding their respective reports on April 2 and 3, 2003. Further, pursuant to these entries, on April 17, 2003 the OUCC, AT&T, McLeodUSA, and MCI filed Comments and supporting affidavits on SBC Indiana's "A-AA" Issues List Filing, and Bearing Point's Interim Report on OSS Testing. SBC Indiana filed its response to the April 17, 2003 Comments on May 1, 2003.

8. On April 28, 2003, the OUCC, MCI, and AT&T filed Comments on SBC's Line-Splitting Compliance Plan, Sec. 271 Pricing and Costing Issues and OSS/Process Issues Referred from Cause No. 40611-S1. SBC Indiana filed its response to the April 17, 2003 Comments on May 8, 2003.

9. On May 27, 2003 the CLECs and the OUCC filed Comments on the May 12, 2003 vendor report from BearingPoint and the Ernst & Young audit reports, as well

as the three months of commercial data. On the same date, SBC Indiana filed Comments on the May 12 vendor report from BearingPoint.

10. The Commission also takes administrative notice of the evaluations of the Illinois, Ohio, Michigan, and Wisconsin Commissions.

11. The Commission, being sufficiently advised in the premises and based upon the applicable law and filings, now finds as follows:

II. Jurisdiction.

A. Authority of the Commission

12. The purpose of this Cause is to investigate and determine whether SBC Indiana's OSS for wholesale transactions with CLECs operate without discriminatory impact upon the CLECs and provide access to SBC Indiana's network. It is important to note that the IURC does not have ultimate decision-making authority concerning whether SBC Indiana may provide interLATA services in this state. This responsibility ultimately rests with the Federal Communications Commission ("FCC"). The IURC's role in this proceeding is largely determined by Section 271(d)(2)(b), which requires the FCC to consult with the relevant state commission to verify whether the BOC has one or more approved interconnection agreements with a facilities-based competitor, or a statement of generally available terms and conditions ("SGAT"), and that either the agreements or the SGAT satisfy the 14-point competitive checklist outlined in Section 271(c)(2)(B). As stated in the Michigan 271 Order (¶¶ 8-9), the FCC has discretion in each 271 proceeding to determine the amount of weight to accord to the state commission's verification of the BOC's compliance with Section 271.

13. Through its orders concerning past 271 applications, the FCC has effectively developed a significant role for the state commissions in this type of proceeding. Specifically, the state commissions have been delegated an essential role as the creator of the initial record upon which the FCC's review of a BOC's compliance with the Section 271 checklist will be based. Furthermore, "where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we [the FCC] may give evidence submitted by the state commission substantial weight in making our decision."² With respect to performance assurance plans, the FCC has stated "the existence of a satisfactory performance monitoring and enforcement mechanism is probative evidence that the BOC will continue to meet its 271 obligations after a grant of such authority."³

² Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York, CC Docket 99-295 (1999), ¶ 51 ("New York 271 Order")

³ Joint Application by BellSouth Corporation, BellSouth Communications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA services in Georgia and Louisiana, CC Docket 02-35 (FCC 02-147, released May 15, 2002), ¶ 291 [additional cites omitted] ("Georgia & Louisiana 271 Order").

14. It is obvious that the IURC's investigation into SBC Indiana's compliance with Section 271 of TA-96 is not a traditional proceeding, but rather an implementation of Federal law as contemplated in Indiana Law. Indiana Code 8-1-1-3 provides "the Commission shall formulate rules necessary or appropriate to carry out the provisions of the chapter, and shall perform the duties imposed by law upon them [sic]." In I.C. 8-1-1-15, the Indiana Legislature specifically recognized that the Commission may promulgate rules necessary to "implement a state or federal statute, rule or regulation." The culmination of this investigation is this report to the FCC. The IURC's record and evaluation will be reviewed by the FCC; the FCC may give the IURC's record and recommendation in this proceeding whatever deference the FCC deems appropriate.

15. In summary, based on the applicable provisions of TA-96, FCC 271 Orders, federal case law, and applicable Indiana law, the Commission concludes that it has broad authority and discretion to: (1) participate in the SBC Indiana Section 271 application analysis and review process; (2) investigate relevant matters pertaining to local exchange competition, and certain SBC OSS and other systems, operations, policies, procedures, and documentation; (3) investigate SBC Indiana's behavior toward its competitors and customers; and (4) issue any orders or docket entries necessary in the course of its investigation, analysis, and review.

B. Role of the Commission

16. The Telecommunications Act of 1996 states, as follows:

On and after the date of enactment of the Telecommunications Act of 1996 ["TA-96"], a Bell operating company or its affiliate may apply to the [FCC] for authorization to provide interLATA services originating in any in-region State. The application shall identify each State for which the authorization is sought. TA-96, sec. 271(d)(1) (codified as amended at 47 U.S.C. § 271(d)(1)).

Not later than 90 days after receiving an application under [Section 271(d)(1)], the [FCC] shall issue a written determination approving or denying the authorization requested in the application for each State. The [FCC] shall not approve the authorization requested in an application submitted under [Section 271(d)(1)] unless it finds that [certain specified conditions are met]. TA-96, sec. 271(d)(3) (codified as amended at 47 U.S.C. § 271(d)(3)).

Before making any determination under [Section 271], the [FCC] shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c) of

this section.⁴ TA-96, sec. 271(d)(2)(B) (codified as amended at 47 U.S.C. § 271(d)(2)(B)) [emphasis added].

17. As previously stated, the FCC has effectively developed a significant role for the state commissions in this type of proceeding. Specifically, the state commissions have been delegated an essential role as the creator of the initial record upon which the FCC's review of a BOC's compliance with the Section 271 checklist will be based. Furthermore, "where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we [the FCC] may give evidence submitted by the state commission substantial weight in making our decision."⁵

18. Congress did not impose any specific requirements or restrictions on how either the FCC or the States were to treat this consultation. Nevertheless, the FCC has taken steps to flesh out this consultative role; the IURC will serve as the creator of the initial record upon which the FCC will base its review of SBC Indiana's compliance with the Section 271 checklist and the nature and extent of competition it faces in relevant product, service, and geographic markets.⁶ The role of "record-maker" was first delegated to the state commissions in 1997:

[S]tate commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications [with the FCC].
Michigan 271 Order, ¶ 30.

19. While the federal Act does not specify the method by which the state commission is to develop its recommendation on the BOC's compliance with Section 271, it appears that the FCC does expect the state commission to conduct some type of investigation and to develop a factual predicate for the state's recommendation: "We will look to the state to resolve factual disputes wherever possible. Indeed, we view the state's and the Department of Justice's role to be one similar to that of an 'expert witness in the application process.'"⁷

20. Each Section 271 application involves complex and detailed issues. A state commission acting as an expert witness can provide the FCC with a more detailed evaluation of the specific BOC and state in question than the FCC would be able to generate independently:

Given the 90-day statutory deadline to reach a decision on a 271 application, the [FCC] does not have the time or the resources to

⁴ The FCC is also required to consult with the U.S. Department of Justice. 47 U.S.C. 271(d)(2)(A).

⁵ New York 271 Order, ¶ 51.

⁶ New York 271 Order, ¶¶ 51 & 54.

⁷ 47 U.S.C. 272(d)(3). See New York 271 Order, ¶ 51. The New York 271 Order is particularly important because it is the first instance in which a BOC satisfied the FCC that it complied with Sections 271 and 272. See, also, Texas 271 Order, ¶ 51.

resolve the enormous number of factual disputes that inevitably arise from the technical details and data involved in such a complex endeavor. Accordingly... where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may [elect to] give evidence submitted by the state commission substantial weight in making our decision.⁸ New York 271 Order, ¶ 51.

21. For all the foregoing reasons, the Commission has jurisdiction over SBC Indiana and the authority to act in the subject matter herein.

III. Background and Nature of Proceeding.

22. The IURC has focused much of its time on third-party testing since it is extensive and time-consuming. The IURC approved the parties' recommendation to utilize Consultant John Kern to facilitate various collaborative workshops held to develop several of the components of Indiana Bell's 271 application, such as OSS enhancements and upgrades, performance measurements, a master test plan for the third-party OSS test, and a performance assurance plan. On August 29, 2000, the Commission issued an order expressing concerns about a number of issues, primarily pertaining to the development of the Indiana Master Test Plan and the scope and methodology of the OSS test. The parties filed several Joint Progress Reports and other joint documents with the Commission setting forth certain agreements regarding upgrades to SBC's OSS, products and services SBC will offer, the process for revising the interim performance measures approved in Cause No. 41324⁹, the choice of a third-party testing agent, choice of a pseudo-CLEC, the initial master test plan, dispute resolution, and change management and procedural issues, among other things. The Commission approved the parties' recommendation that KPMG (now BearingPoint) be the third-party tester. On March 19, 2001, the Commission issued an order approving (1) the initial Master Test Plan (version 1.0), (2) Statement of Work documents for both KPMG Consulting and the Hewlett-Packard Company, (3) the baseline performance measures,¹⁰ (4) the SBC 13-state OSS interface change management plan for multi-state change management issues, and (5) the expanded role for the IURC staff that the parties had requested in their Corrected Joint Petition of March 14, 2001. Pursuant to all

⁸ The FCC is statutorily required to give "substantial weight" to the Attorney General's evaluation; however, this evaluation "shall not have any preclusive effect on any [FCC] determination under [Section 271(d)(3)]." 47 U.S.C. § 271(d)(2)(A).

⁹ Certain initial baseline performance measures for SBC Indiana were approved in Cause No. 41324 on February 16, 2000. In our July 10, 2000 docket entry in Cause Nos. 41657 and 41324, we postponed further consideration of SBC Indiana's "OSS performance measures and other unresolved OSS issues applicable to SBC Indiana" in Cause No. 41324 "to allow time for those issues to be decided in Cause No. 41657 or until further order of the Commission."

¹⁰ The parties to Cause No. 41657 agreed, in collaborative workshops, to a number of modifications to the performance measures that had been developed in Cause No. 41324; they filed a "Joint Petition to Adopt Baseline Performance Measures" in this proceeding on December 27, 2000; a Joint Motion for Expedited Ruling and a "Joint Petition for Approval of Indiana Master Test Plan" on March 12; and a "Corrected Joint Petition for Approval of Master Test Plan" on March 14, 2001.

the Parties' request, the Commission also authorized KPMG Consulting to begin 3rd party testing in Indiana in this March 19, 2001 Order.

23. Subsequent to March 19, 2001, the Commission has issued additional orders and docket entries regarding performance measures¹¹ and performance assurance/remedy plan issues.¹² The Commission also issued further procedural orders and docket entries for this investigation. On October 31, 2002 the Commission issued a detailed Process Order that further defined the Commission's five minimum requirements for its Phase 2 investigation of Track A and the 14-point checklist. For example, this Process Order required SBC Indiana to file a comprehensive, detailed report indicating the arbitration agreement(s), tariff(s), or catalog that it will use to support its Section 271 application and to demonstrate compliance with applicable statutes, FCC and IURC orders and rules, and prior commitments that SBC Indiana has made. The format for this initial response was shown in Attachment A to the October 31, 2002 Process Order. Finally, Phase 3, the Commission's review of the OSS test reports and SBC Indiana's actual performance results was delineated in a series of docket entries, including those dated: February 7, 2003, February 24, 2003, March 25, 2003, April 11, 2003, April 23, 2003 and May 9, 2003.

IV. Track "A" And "Checklist" Compliance – Legal framework

24. SBC Indiana seeks interLATA authority under "Track A"¹³, which requires a BOC to have "entered into one or more binding agreements that have been approved under [S]ection 252" "with one or more unaffiliated competing providers of telephone exchange service to residential and business customers." For the purposes of Track A, the unaffiliated competing providers, with whom the BOC has signed the binding agreement(s) may offer telephone exchange service "either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier." Pursuant to the Track A requirements, such binding agreement(s) must specify "the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network

¹¹ On June 16, 2001, the parties filed a "Corrected Joint Motion for Expedited Amendment of March 19, 2001, Order". The Commission's June 18 docket entry approved those changes. Additional changes were agreed to in the first six-month review, and the parties filed a "Joint Motion for Expedited Amendment of Prior Decisions" on October 10, 2001, seeking approval of certain additional changes agreed to in collaborative discussions – primarily reflecting the implementation of LSOG 4. The Commission approved the changes on January 30, 2002. In its October 16, 2002, Order in this Cause, the Commission imposed certain requirements on SBC Indiana for existing performance measure MI 15 and for proposed PM 124 and 124.1. These performance measures were discussed, and agreement was reached, in the recently concluded six-month review. A Joint Motion was filed on January 13, 2003, and an Amended Joint Motion was filed on February 21, 2003, seeking Commission approval of the agreed measures. That motion is now pending before the Commission. SBC Indiana informs that the agreed-upon changes have been implemented pursuant to agreement among the parties.

¹² Cause No. 41657, Docket Entry (November 9, 2000); Order (Sept. 11, 2001); Docket Entry (July 12, 2002); Docket Entry (August 21, 2002) Order (October 16, 2002).

¹³ 47 U.S.C. § 271(C)(1)(A).

facilities of" the "unaffiliated competing provider[s] of telephone exchange service . . . to residential and business subscribers."

SBC Indiana's Statutory Obligations.

25. In Cause No. 41657, we are concerned, among other things, with SBC Indiana's compliance with Section 271(c). However, in order to verify compliance with Section 271(c), we must also verify SBC Indiana's compliance with those statutes that are referenced in Section 271(c) – primarily, Sections 251 and 252. Indeed, Sections 271(c)(2)(B)(i), (B)(ii), (B)(xii), (B)(xiii), and (B)(xiv) all explicitly require SBC Indiana to comply with at least a portion of Section 251(b), 251(c), and/or 252(d). Section 271(c)(2)(B)(iii) requires SBC Indiana to comply with Section 224.

26. Simplistically, these statutes (Sections 224, 251, 252(d), and 271(c)), as well as certain FCC and IURC orders and rules, require SBC Indiana to do three things – it must provide to CLECs certain products and services¹⁴, under certain terms and conditions, and at certain rates and charges. These three obligations are of great importance to the Commission, as well as the CLECs, the OUCC, and other interested parties. Whether and how SBC fulfills its obligations will have a substantial impact on the general state of competition in SBC's service territory in Indiana and on whether we can ultimately support SBC Indiana's Section 271 application to the FCC.

27. We have addressed Sections 224, 251, and 252(d) in several other proceedings, including SBC Indiana's "TELRIC" proceedings (Cause Nos. 40611 and Cause No. 40611-S1) and SBC's arbitration proceeding with AT&T (Cause No. 40572-INT-03). By virtue of the statutory connection between Sections 271(c) and Sections 224, 251, and 252(d), Congress has effectively created a connection between Cause No. 41657 and Cause Nos. 40611/40611-S1 and 40571-INT-03, among others.¹⁵

Present vs. Future Compliance

28. The FCC has previously concluded that a BOC is "providing" a checklist item:

if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and a practical matter. Like the Department of Justice, we [FCC] emphasize that the mere fact that a BOC has 'offered' to provide checklist items will not suffice for a BOC petitioning under Track A to establish Track A compliance. To be providing a checklist item, a BOC must have a concrete and

¹⁴ The phrase "products and services" is used very broadly, to apply to interconnection and access to UNEs, as well as products and services, more narrowly defined.

¹⁵ The list of other IURC proceedings to which Cause No. 41657 may be linked or related is not meant to be exhaustive.

specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item. Moreover, the petitioning BOC must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality [emphasis added]. Michigan 271 Order, ¶ 110.

29. We note that, in the New York 271 Order, the FCC stated that the petitioning BOC must demonstrate “that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.”¹⁶ We also note that, in the Georgia & Louisiana 271 Order, the FCC emphasized that a BOC seeking 271 authority “must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis” as required under 47 U.S.C. § 271(c)(2)(B)(i) and (ii).¹⁷ We note that many other provisions of the 14-point checklist also prohibit a BOC seeking 271 authority from discriminating against competitors.¹⁸

30. Reading these three orders and the applicable statutory requirements together, then, we are required to determine, at a minimum: (1) whether, and to what extent, the interconnection agreement(s) or other procedural vehicle(s) by which SBC Indiana proposes to demonstrate its compliance with Track A and the 14-point checklist can properly be said to be “binding”; (2) whether, and to what extent, the interconnection agreement(s) or other procedural vehicle(s) by which SBC Indiana proposes to demonstrate its compliance with Track A and the 14-point checklist can properly be said to constitute a “concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item”; (3) whether, and to what extent, the “prices and other terms and conditions” of that proposed interconnection agreement(s) or other procedural vehicle(s) may limit or restrict SBC Indiana’s ability to be “currently furnishing” or “presently ready to furnish” “each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality”; (4) whether, and to what extent, the “prices and other terms and conditions” of that proposed interconnection agreement(s) or other procedural vehicle(s) may limit or restrict CLECs from purchasing and offering any or all checklist items in the quantities that they may reasonably demand and at an acceptable level of quality; and (5) whether, and to what extent, the “prices and other terms and conditions” of that proposed interconnection agreement(s) or other procedural vehicle(s) may be discriminatory. This brief list of evaluation criteria for interconnection agreements is by no means exhaustive and should not be construed as such.

31. The five minimum requirements set forth in the previous paragraph should also apply if, and to the extent that, SBC Indiana proposes to demonstrate

¹⁶ New York 271 Order, ¶ 52.

¹⁷ Georgia & Louisiana 271 Order, Appendix D (“Statutory Requirements”), ¶¶ 5 & 6, at pp. D-3 & D-4.

¹⁸ See, e.g., 47 U.S.C. § 271(c)(2)(B)(iii), (vii), (x), (xii).

compliance with part or all of the 14-point checklist and/or Track A through a tariff or catalog offering, or the IURC requires that a particular product or service be offered in a tariff or catalog. This brief list of evaluation criteria for tariff or catalog offerings is by no means exhaustive and should not be construed as such.

32. Regardless of which Interconnection Agreement/Amendment or other procedural vehicle is used to demonstrate compliance with Track A and the checklist, we must emphasize that actual performance, not promises of future performance, is necessary for compliance. The FCC has further found that:

a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271.¹⁹ In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Thus, we must be able to make a determination based on the evidence in the record that a BOC has actually [i.e., already] demonstrated compliance with the requirements of section 271. Changes or upgrades (e.g., development of new processes for providing access to checklist items) that post-date the application will not be relied upon for checklist compliance, but may provide us with further assurances that the applicant will continue to satisfy the conditions of market entry in the future. Texas 271 Order, ¶ 38.

The Michigan 271 Order contains similar language:

... Paper promises [of compliance with the requirements of Section 271] do not, and cannot, satisfy a BOC's burden of proof ... Significantly, the timing of a section 271 filing is one that is solely within the applicant's control. We [FCC] therefore expect that, when a BOC files its application, it is already in full compliance with the requirements of section 271 and submits with its application sufficient factual evidence to demonstrate such compliance. Evidence demonstrating that a BOC *intends to come into compliance* with the requirements of section 271 by day 90 is insufficient. Michigan 271 Order, ¶ 55.

33. This Commission takes a similar position; in order for us to make a positive recommendation to the FCC in support of SBC Indiana's 271 application for the state of Indiana, "we must be able to make a determination based on the evidence in the record that [SBC Indiana] has actually demonstrated compliance with the requirements of section 271." We, too, are interested in present, actual compliance with

¹⁹See, also, New York 271 Order, ¶ 37; Michigan 271 Order, ¶ 55.

Section 271 (and other applicable federal and state statutory, regulatory, and judicial requirements), not merely with paper promises of future compliance. Indeed, it is only present, actual compliance with the applicable federal and state legal requirements that can assure us that the local exchange and advanced services markets in Indiana Bell's service territory are, indeed, "fully and irreversibly open to competition" [emphasis added].²⁰

V. Status of Competition in Indiana

A. Positions of the Parties

1. SBC Indiana Position

34. SBC Indiana asserts that its application would proceed under, and satisfy the test of Track "A." To establish eligibility under this provision, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business customers." 47 U.S.C. § 271(c)(1)(A). SBC Indiana submits the testimony of Deborah Heritage as support for meeting this requirement.

35. SBC Indiana states it has over 135 Commission-approved wireline interconnection and resale agreements with competing providers. SBC 9/26/02 Heritage Aff. ¶ 4. According to SBC Indiana, at least 8 of these entrants provide services to residential and business subscribers in Indiana, either exclusively or predominantly over their own facilities, and thus qualify as Track "A" competitors. *Id.*

36. According to SBC Indiana, CLECs are clearly giving Indiana consumers "an actual commercial alternative." New Jersey 271 Order, ¶ 10. As of July 2002, it notes, and based upon SBC's methodology for calculating competitors' access line count, CLECs had gained 443,042 lines – approximately 16.6 percent of the total lines – in the SBC Indiana service area. (SBC 9/26/02 Heritage Aff. ¶ 5, Table 2). Approximately 404,662 of these lines, SBC Indiana contends, were served by competitors over SBC's facilities.²¹ (*Id.* ¶ 5, Table 1). Since then, SBC Indiana asserts

²⁰The phrase "fully and irreversibly open to competition" as the DOJ has used it refers to the elimination of barriers to entry and the creation of opportunities to compete; it does not guarantee that SBC Indiana will face actual, effective, full, or fair competition in any particular geographic or product/service market in Indiana, or that any particular level of competition will be reached or maintained: "This standard ["fully and irreversibly open to competition"] seeks to ensure that the barriers to competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and that there are objective criteria to ensure that competing carriers will continue to have nondiscriminatory access to the facilities and services they will need from the incumbent BOC [emphasis added]." Evaluation of the US Dept. of Justice, In re: Application of BellSouth Corp., BellSouth Telecom., Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 [hereinafter, US DOJ Evaluation, Louisiana II], at x, xi.

²¹These 404,662 lines include nearly 111,500 lines served by unbundled loops and UNE platforms provided by SBC Indiana. SBC 9/26/02 Heritage Aff. ¶¶ 11-12. The FCC has determined that CLECs

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that, based upon its methodology for calculating competitors' market share, CLEC activity continued to grow, exceeding 500,000 lines by November 2002. (SBC 1/8/03 Heritage Reply Aff. ¶ 8, Table 1).

37. Vigorous competition is evident, SBC Indiana claims, not only by a review of the data, but also through common and everyday experience. Several CLECs, SBC Indiana asserts, are aggressively packaging and promoting local service plans. See SBC 9/26/02 Heritage Aff. ¶ 8 (advertisements and articles documenting CLEC solicitation of customers in Indiana).

38. SBC Indiana contends that the current market figures reflect substantial growth in recent months. Between July 2001 and July 2002, CLECs' utilization of UNE loops increased by 29 percent. SBC 9/26/02 Heritage Aff. ¶ 7. Likewise, SBC Indiana maintains, facilities-based E911 listings increased by 28%, interconnection trunks increased by 26%, and unbundled loop/port combinations increased to over 55,700 lines. Id.

39. According to SBC Indiana, there is a solid foundation in place for continued growth. The CLECs' *existing* collocation arrangements, it contends, allow them to serve 82 percent of the business access lines and 72 percent of the residential access lines in SBC Indiana's service area. SBC 9/26/02 Heritage Aff. ¶¶ 6, 31. Likewise, the CLECs' aggregate capacity is capable of serving over 100 percent of the customers in SBC Indiana's serving area. Id. ¶¶ 6, 26, Table 3. According to SBC Indiana, no evidence disputes that it satisfies Track "A." Further, not one of the Track A CLECs identified by SBC Indiana disputes that it is a Track A carrier.

40. SBC Indiana notes that there is, however, an attempt to contest the data concerning the number of lines served by CLECs, or to complain that the data should be ignored because of financial difficulties experienced by some CLECs. See, e.g., AT&T 12/11/02 Comments at 15-17. SBC Indiana contends that the testimony of its witness, Deborah Heritage, refutes such criticisms. SBC Indiana asserts that ultimately these claims are irrelevant for purposes of determining whether SBC Indiana satisfies Track A.

Estimates of CLEC Lines

41. SBC Indiana explains that it uses its own records to determine its own total number of access lines, and the number of lines that CLECs serve by using SBC Indiana facilities (via resale or the UNE "Platform"), but it does not have records for facilities-based CLEC lines (the CLECs maintain their own records). SBC 9/26/02 Heritage Aff. ¶¶ 5, 13. Thus, SBC Indiana estimates that portion of CLEC lines by using

(... cont'd)

using UNEs to provide service are providing service over their "own facilities" for purposes of Track "A." Michigan 271 Order, ¶94.

two complementary and conservative methodologies, each of which serves as a check on the other. Id. ¶ 5.

42. First, SBC Indiana uses the number of listings CLECs have in the database that is used for routing “911” calls. SBC 9/26/02 Heritage Aff. ¶ 5. This methodology is conservative, SBC Indiana maintains, in that the 911 database includes only lines that are used for outbound calling, and excludes lines used only for inward calls, or dedicated lines for equipment such as computers. Id. ¶¶ 14-15, 18. Lines served by resale or by the UNE “Platform” are not attributed to CLECs in the 911 database, and SBC Indiana adds these to the E911 listings to derive the total number of CLEC lines. Id. ¶ 16.

43. Second, SBC Indiana calculates CLEC facilities-based lines by using the number of interconnection trunks that the CLECs use to link with SBC Indiana’s network facilities. SBC 9/26/02 Heritage Aff. ¶ 5. SBC Indiana indicates that according to the United States Telecom Association (USTA) UNE Fact Report a single trunk can serve approximately 10 end user lines. Id. ¶ 20. Based on a number of unique factors related to CLEC engineering practices and customer bases that require a higher number of interconnection trunks, the USTA conservatively estimated that CLEC trunks are serving between 2.5 and 5 facilities-based lines per trunk. Id. SBC Indiana chose a conservative ratio of 2.75:1 to estimate CLEC facilities-based lines. Id.

44. These two approaches, SBC Indiana notes, are the same as those used by SWBT in its FCC-approved applications for Texas, Kansas, Oklahoma, Arkansas, and Missouri. SBC 9/26/02 Heritage Aff. ¶ 5. Despite AT&T’s protestations, and despite the fact that the CLECs have their own business records showing the exact number of lines they serve, SBC Indiana notes that not one CLEC produced evidence to rebut the number of lines attributed to it by SBC Indiana, and not one CLEC challenged SBC Indiana’s ultimate conclusion that it satisfies Track “A.” SBC 1/8/03 Heritage Reply Aff. ¶ 7.

45. SBC Indiana points out that the FCC has repeatedly rejected similar CLEC criticisms of the methodology used to estimate CLEC market share. See Kansas & Oklahoma 271 Order, ¶ 42 (“We note that commentators have complained that SWBT’s method of estimation overstates the number of [CLEC] customers. We find, however, that SWBT’s response[s] to these competitors support our conclusion that more than a de minimis number of residential customers are served via UNE-P in Kansas.”); Georgia & Louisiana 271 Order, ¶ 13 (“Two commenters assert that BellSouth overestimates the number of lines provided by competitors in Georgia. . . . [E]ven if BellSouth’s methodology inflates the total number of lines, as Sprint and AT&T suggest, we still find that there is an actual commercial alternative based on the sufficient number of voice customers served over competing LECs’ own facilities.”); New Jersey 271 Order, ¶ 13 (rejecting allegation that “the numbers that Verizon reports for Track A are wrong” because none of the “competing LECs disputed the numbers that Verizon attributes to them for purposes of Track A”).

Financial Difficulties in the Telecommunications Industry

46. While AT&T contends that some of the carriers included in SBC Indiana's market analysis (including 8 of the 12 Track "A" carriers) are not "viable" and should be ignored because they are in or "near" bankruptcy, the evidence does not support AT&T's conclusion about the individual carriers or the viability of CLECs in Indiana as a whole. AT&T 12/11/02 Comments at 16; AT&T 12/11/02 Turner Aff. ¶¶ 34-46.

47. SBC Indiana asserts that CLECs have achieved remarkable growth in Indiana. Outside observers have also concluded that the CLEC industry is far from failing. See SBC 1/8/03 Heritage Reply Aff. ¶ 42. Notably too, none of the Track "A" carriers that AT&T would deem "not viable" disputes its status as a Track "A" carrier. Id. ¶¶ 40-41. In contrast, SBC Indiana maintains, several have publicly proclaimed that they *are* viable (as Focal, XO, and Z-Tel did), or that they have emerged from bankruptcy (as Covad and McLeodUSA did), averted bankruptcy (as CoreComm did), or will continue operations without interruption. Id. ¶¶ 36, 40.

48. In any event, SBC Indiana asserts that AT&T's contentions do not affect Track "A" compliance. While there is no denying that the telecommunications industry in general (with respect to incumbents and CLECs alike) experienced a downturn, there is also no need to review CLEC financials, or attempt to predict the future economic climate, SBC Indiana claims. SBC 1/8/03 Heritage Reply Aff. ¶ 38, 45. SBC Indiana notes that the FCC – which knows the state of the industry as well as anyone – has granted several section 271 applications in the current economic setting, and it has specifically held that a section 271 proceeding is no place for a referendum on the viability of individual CLECs or the industry as a whole. See Rhode Island 271 Order, ¶ 106 ("Sprint also argues that . . . the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments."); Georgia & Louisiana 271 Order, ¶ 282 ("Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the financial hardships of the competitive LEC community do not undermine that showing."). As the FCC explained, "[w]e have consistently declined to use factors beyond the control of the BOC, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an application." Id. Track "A", SBC Indiana maintains, does not require that CLECs achieve any particular market share and still less does it require that CLECs achieve any particular profit level.

2. OUCC Position

49. According to the Indiana Office of Utility Consumer Counselor ("OUCC"), the IURC should focus on whether the local exchange market is sufficiently competitive to justify allowing SBC Indiana into the inter-LATA, interexchange market. OUCC 12/11/02 Comments at 6-7. The OUCC finds that SBC Indiana's claim that it has opened its local exchange market to competition to be premature given the pending state and federal appeals initiated by SBC Indiana challenging key IURC rulings on (1) wholesale pricing and tariffing issues, and (2) adoption of a state remedy plan by the IURC. Id. at 1-2. The OUCC further claims that the IURC's Annual Reports to the

Regulatory Flexibility Committee show that Indiana is significantly behind other states in the development of competition in the local exchange service market. Id. at 3.

50. The OUCC also argues that the interconnection agreements cited by SBC Indiana as evidence of local exchange market openness are the result of long and hard fought legal battles. Id. at 4-5. Therefore, the OUCC reasons, significant delay and uncertainty have been injected into the competitive process, thereby limiting true competition in the market. Id.

51. The OUCC also anticipates that SBC Indiana will argue that 271 approval will further the interest of increasing competitive alternatives in Indiana's inter-LATA, interexchange service market. Id. at 6. However, the OUCC points to the IURC web-page as demonstrating that Indiana already has numerous competitive inter-LATA service providers, negating this potential benefit. Id.

3. WorldCom's Position

52. According to WorldCom, the local market in Indiana cannot be "fully and irreversibly open" to competition given what it calls "SBC's recent full-fledged assault on the continued availability of the UNE Platform and UNE pricing," as well as SBC Indiana's lack of compliance with Commission orders and state laws aimed at opening the market to competition. WorldCom 12/11/02 Campion Aff. ¶ 4. Further, WorldCom asserts that the IURC Remedy Plan Order is necessary to ensure that SBC Indiana provides nondiscriminatory access to unbundled network elements and therefore Section 271 approval should not be granted without its implementation. Id. Finally, WorldCom indicates that TELRIC pricing for UNEs and interconnection must be capped for a period of five years from the time that SBC Indiana receives Section 271 approval. Id.

4. AT&T Position

53. According to AT&T, facilities-based competition exists only in a limited form in Indiana and at such a nascent level that it cannot provide a "check" on the anticompetitive tendencies of the local exchange service monopoly. AT&T 12/11/02 Comments at 14; AT&T 12/11/02 Turner Aff. ¶ 6.

54. AT&T concludes that the various indicators SBC Indiana has used to demonstrate the degree of competition in Indiana produce flawed and misleading estimates of the level of actual competition. AT&T 12/11/02 Comments at 15-17; AT&T 12/11/02 Turner Aff. ¶ 7. It further maintains that testimony of its witness, Mr. Turner, demonstrated that SBC Indiana has precluded competitors from entering its market via the UNE-P alternative as compared to some other states where SBC has already received approval to offer long distance. AT&T 12/11/02 Comments at 17. The level of competition in Indiana is actually quite low when compared to these other states, AT&T argues, and that alone should cause the Commission to review of SBC Indiana's compliance with Section 271 requirements with strict scrutiny. AT&T 12/11/02 Comments at 5; AT&T 12/11/02 Turner Aff. ¶ 7.

SBC Indiana's Competitive Data

55. AT&T states that SBC Indiana is, in many instances, the only source of the data available to conduct a complete assessment of competition in Indiana. AT&T 12/11/02 Turner Aff. ¶ 9. As such, it suggests that this Commission not take SBC Indiana's one-sided version of the data at face value. Id.

56. AT&T explains that its witness (Turner) relied on four sources of information to rebut Ms. Heritage's claims regarding the level of competition in SBC Indiana's territory, to wit:

- (1) information available from the FCC;
- (2) public sources of information on the status of competitors that SBC Indiana has identified in Indiana, including press releases and financial filings relevant to the assessment of the sustainability of the limited competition that does exist in Indiana;
- (3) the Texas Public Utility Commission's "2001 Report on the Scope of Competition in Telecommunications Markets", a document requested by the Texas legislature and prepared by the Texas Public Utility Commission; and,
- (4) the Telephone Report to the Regulatory Flexibility Committee of the Indiana General Assembly, as an unbiased evaluation of the level of competition in Indiana. AT&T 12/11/02 Turner Aff. ¶ 11.

Facilities-Based Competition

57. Several factors, AT&T contends, must be evaluated in considering the capabilities of CLECs to provide facilities-based service in Indiana. Although not an exhaustive list, CLECs need the following components in order to provide facilities-based local exchange service: (1) interconnection trunks and usage; (2) unbundled loops; (3) local switching; and (4) interoffice facilities. AT&T 12/11/02 Turner Aff. ¶ 16. These components, AT&T argues, are currently in place on a very limited scale in Indiana. Id. Also, AT&T comments that Ms. Heritage's use of data in these areas grossly overstates the competitive threat of CLECs in Indiana because it fails to place CLEC data in context against the vastly greater resources of SBC Indiana. Id.

Interconnection Trunks and Usage

58. According to the information provided by SBC Indiana witness Heritage, 126,866 interconnection trunks have been established between itself and CLECs in Indiana. SBC 9/26/02 Heritage Aff. ¶ 19. AT&T witness Turner contends that analysis of the minutes of use exchanged in both directions across these interconnection trunks may identify whether there is a balance in traffic between SBC Indiana and the CLECs. AT&T 12/11/02 Turner Aff. ¶ 17. AT&T witness Turner notes that, in his experience, there is normally much more traffic coming from SBC to the CLECs than traffic passing

from the CLECs to SBC, generally indicative of a disproportionate percentage of CLEC internet service provider customers that are large net terminators of traffic. Id. Accordingly, this analysis usually shows the narrow nature of the CLEC facilities-based customer base and the corresponding lack of competition in traditional telephone services. Id. AT&T witness Turner, however, was unable to conduct this analysis based on the total number of interconnection minutes data provided by SBC Indiana. Id.

Unbundled Loops

59. AT&T submits that the limited use of unbundled loops in Indiana speaks for itself regarding the actual level of competition in Indiana. AT&T 12/11/02 Turner Aff. ¶ 18. AT&T notes that, according to SBC Indiana, 111,492 unbundled loops have been utilized in Indiana. AT&T 12/11/02 Turner Aff. ¶ 19. In its most recent publicly available data, AT&T observes, SBC Indiana indicates that it has 3,688,966 access lines in Indiana. Id. Even when accepting this data as accurate, AT&T maintains that the total number of unbundled loops equates to only 3.0 percent of the access lines in Indiana. Id.

Local Switching

60. According to AT&T, SBC Indiana witness Heritage notes that there are 14 competing local voice switches in Indiana and she indicates that 14 switches *could* serve over 100 percent of the market in Indiana. AT&T 12/11/02 Turner Aff. ¶ 20. Compared to these 14 CLEC switches, AT&T notes that SBC Indiana has 98 central office switches excluding remotes, and 232 switches including remotes. Id. As such, AT&T argues, SBC Indiana has sufficient switching capacity in Indiana to serve every line approximately 7 times, excluding the capacity of SBC Indiana's remote switches. Id. In AT&T's view, the fact that CLECs have 14 switches bears no relationship to the number of lines the CLECs actually *do* or *will* serve any more than it matters that SBC Indiana can serve every line in Indiana 7 times (excluding remote switches). Id.

Facilities-Based Access Line Count - Trunk to Line Count Ratio

61. AT&T contends that SBC Indiana's estimated assessment of the number of lines served by facilities-based CLECs is inappropriate, in that as much as 86.2 percent of SBC Indiana's alleged access line losses are nothing more than *estimates* based on converting interconnection trunks into access line equivalents – without any regard for how the trunks are used. AT&T 12/11/02 Comments at 15; AT&T 12/11/02 Turner Aff. ¶ 22.

62. According to SBC Indiana witness Heritage, Indiana CLECs have acquired as many as 404,662 facilities-based access lines. AT&T 12/11/02 Comments at 15; AT&T 12/11/02 Turner Aff. ¶ 23. However, only 55,871 access lines (those that are UNE-P combinations) represent the *actual* number of access lines directly included in the total. Id. The remaining 348,881 access lines, AT&T points out, are merely an estimate of the number of lines served in Indiana by facilities-based CLECs. Id. To reach this number, AT&T observes, SBC Indiana simply assumed that each trunk

equates to 2.75 access lines per trunk, and multiplied the 126,866 interconnection trunks that SBC Indiana has provisioned in Indiana by a factor of 2.75 lines per trunk. Id.

63. While estimating is not an inappropriate tool, AT&T contends that SBC Indiana used erroneous assumptions regarding interconnection trunks that skew the results. AT&T 12/11/02 Turner Aff. ¶ 24. First, AT&T argues, SBC Indiana did not adjust for the large quantity of ISP traffic that CLECs carry. AT&T 12/11/02 Comments at 15; AT&T 12/11/02 Turner Aff. ¶ 24. Due to the nature of this traffic, AT&T maintains, the CLEC will require closer to one trunk per each ISP line equivalent – not 2.75 lines per trunk. AT&T 12/11/02 Comments at 16; AT&T 12/11/02 Turner Aff. ¶ 24. Otherwise, the CLEC could be in a situation where it has ISP lines available, but has insufficient trunk capacity to carry the call from SBC Indiana. Id. For such trunks, AT&T argues, the 2.75 access line per trunk ratio used by SBC Indiana's Ms. Heritage significantly overstates the number of access lines, especially given the fact that the vast majority of trunks are used for ISP traffic. Id.

64. AT&T sees Ms. Heritage as acknowledging that many CLECs, in the early stages of network development, lack the economies of scale to obtain the efficient trunk configurations SBC Indiana currently enjoys. AT&T 12/11/02 Turner Aff. ¶ 25. Moreover, some CLECs primarily serve business customers (that have a very focused busy hour), AT&T argues, and this drives up CLEC trunking requirements because trunking arrangements must be in place to accommodate traffic during this peak period, (even if traffic volumes are lower at other times of day). Id. According to AT&T, the Department of Justice (DOJ), when evaluating this very issue in prior Section 271 proceedings, recognized that use of a 2.75 factor overstates the level of competition. AT&T 12/11/02 Turner Aff. ¶ 26. In commenting on the Texas Section 271 application, the DOJ recommended that a 1:1 ratio between trunks and estimated lines was a "more reasonable multiplier." AT&T 12/11/02 Comments at 16; AT&T 12/11/02 Turner Aff. ¶ 26. As such, AT&T contends, the Commission should reject SBC Indiana's suggested factor. Id.

E911 Database to Demonstrate Facilities-Based Competition

65. AT&T notes SBC Indiana witness Heritage proposes that the ratio of lines, business to residential, contained in the E911 database, be used to determine the split of all facilities-based lines (after the inaccurate conversion of trunks into line equivalents that AT&T already addressed, has occurred). This approach, AT&T argues, is significantly flawed in additional respects. AT&T 12/11/02 Turner Aff. ¶ 28.

66. As Ms. Heritage notes, E911 listings only represent those customer lines from which outbound calls can be made. AT&T 12/11/02 Turner Aff. ¶ 29. As a result, AT&T maintains, business customers such as call centers, reservation or telemarketing centers, and Internet providers need not report them in the 911 database and, thus, will have few of their access lines represented in the E911 database. Id. According to AT&T, this means that the ratio of business lines reflected by the database is likely significantly understated. Id. If the E911 database underreports business lines (because the CLEC does not need to include many of them in the database), then, AT&T

contends, the ratio of business to residential lines in the E911 database will make the residential percentage look artificially high. Id. Consequently, in AT&T's view, Heritage's approach will convert trunks to equivalent access lines that are not included in the E911 database. Id.

The Viable Competitors Are Struggling or Bankrupt

67. AT&T notes Ms. Heritage to list a total of 41 facilities-based CLECs as "evidence" of the vibrant competitive market in Indiana. AT&T 12/11/02 Comments at 16; AT&T 12/11/02 Turner Aff. ¶ 34. AT&T argues that many of these companies are either in bankruptcy or in grave financial circumstances. Id. At the time AT&T witness Turner filed his direct testimony, AT&T observes, at least 18 of the companies listed in Ms. Heritage's testimony were already in or extremely near bankruptcy or simply no longer existed. AT&T 12/11/02 Comments at 16; AT&T 12/11/02 Turner Aff. ¶ 35.

68. According to AT&T, SBC Indiana selectively spotlights just eight of its competitors in Attachment C of SBC 9/26/02 Heritage Affidavit. AT&T 12/11/02 Turner Aff. ¶ 37. Only one of these eight CLECs, AT&T contends, could even arguably be considered viable "Track A" competitors to SBC Indiana in Indiana. Id. This CLEC – AT&T – is a larger company that can support the cash infusion required to start up a new business in an area currently dominated by one company. Id. The other CLECs on the list, AT&T argues, do not represent viable future enterprises or do not compete with SBC Indiana in a materially significant manner. Id. ¶¶ 37-46. These, AT&T maintains, are Choice One Communications, Cinergy Communications, McLeodUSA, SIGECOM LCC, Talk America Holdings, Inc. and WorldCom and Z-Tel Communications. Id. ¶¶ 38-46.

Anti-Competitive Risk of Premature Entry

69. According to AT&T, the experience in states where SBC has already received Section 271 approval indicates that competition has been thwarted because of SBC's premature entry into the long-distance market. AT&T 12/11/02 Turner Aff. ¶30. AT&T points to Texas as proof, citing the Texas Public Utility Commission's 2001 report that the potential for competition exists only in the four largest metro areas in Texas and rural and residential customers have been "largely...left behind in the move to competition." Id. AT&T also argues that CLECs are losing rather than gaining market share in Texas, such that only the "potential" for a competitive environment exists in Texas and consumers in Texas are now paying higher prices because of SBC's premature Section 271 approval. Id. ¶ 32.

5. SBC Indiana Reply Position

70. No one, the Company contends, disputes the showing that SBC Indiana has interconnection agreements with "one or more competing providers of telephone exchange service" that serve "more than a *de minimis* number" of residential and business subscribers. (New Jersey 271 Order, ¶ 10) Nor does SBC Indiana think that there is any room for dispute. SBC 1/8/03 Heritage Reply Aff. ¶¶ 6-7. As of November

2002, it argues, CLECs served over 500,000 lines or 18.8 percent of the total lines in the SBC Indiana service area. SBC 1/8/03 Heritage Reply Aff. ¶ 8, Table 1.

Estimates of CLEC Lines

71. SBC Indiana sees the CLECs as trying to manufacture a debate about their market share. It is no secret, SBC Indiana asserts, that its analysis is based, in part, on estimates. SBC Indiana agrees that actual data is generally preferable to estimates, but it also views several flaws in the criticisms of its showings. At the outset, SBC Indiana notes, even if one were to take the patently under-inclusive approach of *ignoring* the estimated portion of SBC Indiana's analysis (and thus assume that there are *no* CLEC lines served entirely by CLEC facilities), the 166,572 lines for which SBC Indiana has actual records – and as to which there is no dispute – are enough to satisfy the “more than *de minimis*” requirement of Track A.

72. So too, the Company contends, the critics overlook the obvious, i.e., for those lines estimated by SBC Indiana, the actual data reside with the CLECs themselves. If there were really a material problem with its estimates, any CLEC could have presented evidence to the contrary. No CLEC did so, SBC Indiana contends.

73. In the final analysis, SBC Indiana points out that based on Congress' intent, the FCC, and the D.C. Circuit have both held that there is no market share test under Track A. Georgia & Louisiana 271 Order, ¶ 14 (“Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance. Accordingly, the applicant is not required to show that competitors have captured any particular market share.”); New Jersey 271 Order, ¶ 10 (Track A does not “require any particular level of market penetration”); Sprint Communications Co. v. FCC, 274 F.3d 549, 553-54 (D.C. Cir. 2001) (agreeing with the FCC that the Act “imposes no volume requirements for satisfaction of Track A”).

Financial Difficulties in the Telecommunications Industry

74. SBC Indiana claims that AT&T's reports of the CLEC industry's demise are not only greatly exaggerated, but also irrelevant to Track A. SBC 1/8/03 Heritage Reply Aff. ¶ 37. It points out that not even one of the CLECs that AT&T has declared as “not viable” (including WorldCom) agrees with AT&T's assessment of its prospects. Id. ¶¶ 40-41.

75. The more important point, SBC Indiana maintains, is that this Commission need not resolve the debate taking place in the media or the alleged contradiction between the arguments that AT&T makes here and its public statements. For purposes of section 271, SBC Indiana contends, the FCC disagreed with CLECs on these key issues: “Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the financial hardships of the competitive LEC community do not undermine that showing.”²² We (FCC) have consistently declined to

²² BellSouth GALA I Stockdale Reply Aff. at 3

use factors beyond the control of the BOC, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an application.²³ Georgia & Louisiana 271 Order, ¶ 282. See also Rhode Island 271 Order, ¶ 106 (“Sprint also argues that . . . the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments.”).

Competition Grows After Section 271 Approval

76. SBC Indiana maintains that competition in Texas has experienced significant growth since SBC obtained Section 271 approval there. SBC 1/8/03 Heritage Reply Aff. ¶ 50. SBC Indiana also clarifies that the Texas Commission’s report states that “evidence available for this report clearly demonstrates that competitive providers have a visible market share, with dozens of CLECs entering the more lucrative local wireline voice markets in Texas.” *Id.* Therefore, there is no basis for AT&T’s argument the Section 271 approval is premature or risks thwarting future competition in the local market.

6. Commission Review and Conclusion

77. No party disputes that SBC Indiana has at least 135 Commission-approved wireline and resale agreements with competing providers. This number includes voluntarily-negotiated agreements and CLEC adoption of approved agreements. At least 8 of these entrants provide services to residential and/or business subscribers in the State of Indiana, either exclusively or predominantly over their own facilities. The IURC’s 2002 Annual Telephone Survey of local service providers estimates that 30% of competitive access lines are provisioned over facilities owned by the CLEC, 26 % through UNE-P, 26% by UNE-Loop, and the balance by either resold services or Intrastate Special Access.

78. Despite the numerous arguments raised regarding the degree of competition in SBC Indiana service territory, the Commission must remain focused on whether SBC Indiana provided sufficient evidence that one or more carriers are providing local exchange services either exclusively over their own telephone exchange service facilities or in combination with the resale of the telecommunications services of another carrier. The OUCC’s and WorldCom’s arguments will be addressed under the Public Interest analysis. As for Track “A”, SBC Indiana has provided sufficient evidence to warrant a finding that the eligibility requirements of Section 271(c)(1)(A) are satisfied.

79. Congress declined to require a market share test in Section 271.²⁴ Based upon market share data that SBC and various CLECs previously submitted to the IURC for Calendar Year 2001 – the last year for which we have complete data from a sufficient number of carriers with sufficiently large numbers of lines to have an impact

²³ See Verizon Pennsylvania Order, 16 FCC Rcd at 17487, para. 126; BellSouth GALA I Reply at 83-4; BellSouth GALA I Stockdale Reply Aff. at 12; BellSouth GALA I Taylor Aff. at 9-12.

²⁴ See, e.g., Ameritech Michigan Order, Para. 77 & n. 170 (rel. Aug. 19, 1997).

on the end results – it appears that, as of December 31, 2001, CLEC competitors to SBC Indiana were serving more than a *de minimis* number of customers in SBC Indiana's service territory using UNE loops, resold lines, and the CLECs' own facilities. The relevant portions (with various market share and access line count data and statistics) of the IURC's 2001 report to the Regulatory Flexibility Committee of the Indiana General Assembly are attached to this Report as Appendix 1. As previously stated, the IURC's 2002 Survey estimates competitive share continues to grow.

80. As we said earlier, based upon market share data that SBC and various CLECs previously submitted to the IURC for Calendar Year 2001 – the last year for which we have complete data from a sufficient number of carriers with sufficiently large numbers of lines to have an impact on the end results – it appears that, as of December 31, 2001, CLEC competitors to SBC Indiana were serving more than a *de minimis* number of customers in SBC Indiana's service territory using UNE loops, resold lines, and the CLECs' own facilities. Based upon incomplete estimates for Calendar Year 2002, we also estimate that wireline CLECs are serving more than a *de minimis* number of customers in SBC Indiana's service territory using UNE Platforms (UNE-P).

VI. Compliance, Implementation, and Improvement Evaluations

A. Performance Data

81. To gain approval of its Application from the FCC, and a favorable recommendation from this Commission, SBC Indiana must further demonstrate that it satisfies the requirements of Section 271 (c)(2)(B), which sets out 14 Checklist Items.

82. In Section B below, the IURC addresses each item of the 14-point checklist, summarizing arguments related to the availability and pricing of checklist items. In Section C, the IURC assesses (i) commercial performance results for the November 2002 – January 2003 period; (ii) pertinent aspects of the OSS test, and (iii) issues raised by OUCC and the CLECs, to determine whether SBC Indiana provides checklist items in a nondiscriminatory fashion. In Section D, the IURC addresses SBC Indiana's implementation of the various OSS and process enhancements included in the "A to AA" list, while Section E addresses the "public interest" analysis of Section 271(d)(3)(C) of the federal Act. The IURC addresses SBC Indiana's compliance and improvement plans for certain areas in Section F. The IURC addresses certain enforcement problems and issues elsewhere herein.

83. As contemplated by the Commission's prior process orders, the principal sources of evidence regarding SBC Indiana's performance are (i) the results of three months of commercial performance, using the performance measures previously developed in Phase 1, and (ii) the results of BearingPoint's test of Operations Support Systems ("OSS"). We will also briefly discuss the separate performance measure audit conducted by SBC's accounting and financial auditor, Ernst & Young ("E & Y").

1. Standards Of Review

84. The CLECs have raised a threshold issue with respect to the reliability of SBC Indiana's commercial performance reports. On January 17, 2003, SBC Indiana notified the Commission that BearingPoint was not likely to complete its on-going reviews for certain portions of the Performance Metrics Review ("PMR") before SBC Indiana files the three consecutive months of actual performance results. Accordingly, SBC Indiana sought to supplement the record on this issue with the results of a separate audit by Ernst & Young ("E&Y").

85. The FCC has on several occasions addressed generalized complaints about the reliability of an applicant's performance reports. In rejecting those allegations, the FCC has considered the following mechanisms that provide reasonable assurance that the applicant's reports are reliable: (i) "extensive third-party auditing," (ii) the "open and collaborative nature of metric workshops," (iii) supervision by the applicable state commission, (iv) the "availability of the raw performance data" to CLECs and the applicant's "readiness to engage in data reconciliations" between its own records and those of the CLECs, and (v) the applicant's internal and external data controls. Georgia & Louisiana 271 Order, ¶ 19.

2. The Evidence, Argument, and Positions Of The Parties

a. SBC Indiana Position

1) BearingPoint's Performance Metric Review

86. SBC Indiana states that BearingPoint is continuing its review of SBC's collection, calculation, and reporting of commercial performance results. BearingPoint's February 28, 2003, Performance Metric Review ("PMR") includes 271 applicable test points. BearingPoint's Report notes that 84 PMR test points have been "Satisfied," 85 are considered "Not Satisfied," and 100 are "Indeterminate." (SBC 5/1/03 Ehr Aff. ¶ 6.)

87. SBC Indiana argues that there is no need for the Commission to attempt to reach a conclusion on all of the detailed PMR test criteria now, and that SBC Indiana is not asking the Commission to terminate the test. The test will still go on, and SBC Indiana will continue to work with BearingPoint to address findings as they are raised. The present inquiry concerns overall checklist compliance today. Thus, SBC Indiana states that the question now is whether BearingPoint's PMR findings thus far are sufficient to warrant a finding of non-compliance. SBC Indiana contends that a substantive analysis of BearingPoint's results in the context of the evidence as a whole, clearly demonstrates that the answer is no.

88. SBC Indiana claims that the picture painted by AT&T and WorldCom of the BearingPoint test is both inaccurate and incomplete. SBC Indiana asserts that the CLECs' general approach is to describe a test criterion, explain why it is important, and then say what a "Not Satisfied" score might mean, under a worst-case scenario (for example, what would happen if there were no documented procedures for performance

reporting). (SBC 5/1/03 Ehr Aff. ¶ 20.) That approach leaves out two critical facts, SBC Indiana states.

89. First, SBC Indiana claims, the commenters do not adequately describe what BearingPoint's findings really mean – in other words, what led BearingPoint to issue an exception. In SBC Indiana's view, many "Not Satisfied" scores do not stem from BearingPoint finding a real problem or an error in reported results, but from BearingPoint wanting to see more information before it is satisfied. (Id. ¶ 19.) Some other test points are open because of an issue that only affects part of a test point, or an issue that was corrected, and therefore is not material to the three months' results provided here. (Id.) An "Indeterminate" status indicates that while BearingPoint is not done testing, there have not been issues associated with the test criterion. (SBC 5/1/03 Ehr Aff. ¶ 13.)

90. Second, SBC Indiana asserts that the commenters fail to address (and in some cases ignore outright) what happened after BearingPoint issued its exception. SBC Indiana has already responded to most of the current Observations and Exceptions, and BearingPoint is in the process of re-testing those Observations and Exceptions for which SBC has consented to re-testing and for which re-testing is possible. (Id. ¶ 123.) Since the date of the February 28, 2003 BearingPoint Report, BearingPoint has already closed several exceptions, and significantly narrowed others (including Exceptions 19 and 20, which the CLECs have placed at the forefront of their "data reliability" arguments in the past two years).²⁵ (Id. ¶¶ 38, 43.)

PMR 2 (Metrics Definitions and Standards)

91. According to SBC Indiana, two of the five PMR test domains (PMR 2 and 3) are substantially complete. PMR 2 addresses the definitions of metrics and standards. SBC Indiana advises that BearingPoint has substantially completed its review, and has verified that SBC Indiana has implemented the performance measurement "business rules" approved by the Commission; that the business rules are published and accessible to CLECs; and that SBC Indiana's monthly performance reports are published on time and are accessible to CLECs. SBC Indiana states that it satisfied all three test criteria in this area. (SBC 5/1/03 Ehr Aff. ¶ 24.) We note that BearingPoint is currently reviewing SBC Indiana's implementation of PM User Guide version 1.9 for Indiana under PMR 2.

PMR 3 (Metrics Change Management)

92. PMR 3 addresses "change management": the process of implementing periodic updates to performance measurement business rules. According to SBC Indiana, the test consists of two main parts: PMR "3A" addresses change management in general, while PMR "3B" tests procedures for recalculating performance remedies if the underlying results are restated. Of the 29 test criteria in this area, SBC Indiana

²⁵ As noted later, the scope of some Exceptions (e.g., Exceptions 187 and 188) has been narrowed for some of the affected performance measures and expanded for others.

informs, 27 are marked "satisfied" in the February 28 BearingPoint Report. SBC Indiana states that an additional test point has effectively been satisfied after that Report date, as BearingPoint has proposed closing Exception 157 on that point. (SBC 5/1/03 Ehr Aff. ¶ 27.) According to SBC Indiana, BearingPoint has determined that the metrics change management process – and the responsibilities of the parties involved – are documented, and that the process includes: (i) a well-defined procedure for managing change requests; (ii) a high-level assessment of each requested change; (iii) an analysis of the change at a business level by experts in the subject measured; (iv) formulation of a detailed technical design prior to the start of implementation work; and (v) an independent review by the performance measurement group to ensure that the technical design is consistent with the expert business assessment. (Id. ¶¶ 25-29.) We note that BearingPoint will need to conduct the PMR 3B test and analysis for the new SBC Indiana Section 271 Remedy Plan.

PMR 1 (Data Collection and Retention)

93. PMR 1 evaluates SBC's procedures for data collection and retention. Of the 126 test criteria in PMR 1, 30 were assessed "Satisfied" as of the February 28 Report, while 34 points were assessed "Not Satisfied," and 62 were considered "Indeterminate." (SBC 5/1/03 Ehr Aff. ¶ 6.) Since then, SBC Indiana states, testing has continued and the number of "satisfied" test points has increased, as shown in the May 2003 Report discussed below.

94. According to SBC Indiana, of the 34 "Not Satisfied" criteria, 25 related to documentation of reporting procedures. (Id. ¶ 49.) These areas are referenced in PMR1-1 and 1-2 of the BearingPoint report. SBC Indiana states that it has enhanced the degree of documentation concerning its measurement procedures and has provided over 6,000 pages of supporting performance metrics documentation regarding those procedures to BearingPoint. BearingPoint has been reviewing this documentation, and after the February 28 report it added two test points to the "Satisfied" status. (Id. ¶ 50.) The two principal exceptions in this area are Exceptions 187 (PMR 1-2) and 188 (PMR 1-1)

95. Exception 187: SBC Indiana states that of the 150 total measures that SBC Indiana reports, the Exception relates to 47. Of these, SBC Indiana informs that it and BearingPoint already resolved the issues BearingPoint identified for 4 PMs. SBC Indiana further states that it has responded to BearingPoint regarding an additional 35 measures, and BearingPoint is reviewing that response. Given the successful resolution of the measures already reviewed by BearingPoint, SBC Indiana expects BearingPoint to find the other responses complete and adequate. (SBC 5/1/03 Ehr Aff. ¶ 57.)

96. With regard to Exception 188, SBC Indiana disagrees with AT&T's view that SBC Indiana did not have enough documentation of systems and processes to report performance results. That is simply not true, SBC Indiana states. SBC Indiana explains that, in its opinion, prior to BearingPoint's initial review of SBC Indiana's data flow diagrams and data element maps, SBC Indiana had sufficient documentation to

perform the day-to-day functions of processing and reporting performance results. (SBC 5/1/03 Ehr Aff. ¶ 52.)

97. SBC Indiana states that of the 150 total measurements, Exception 188 relates to 55. SBC Indiana advises that BearingPoint and SBC Indiana have resolved BearingPoint's issues for 3 measures, that SBC Indiana has responded to BearingPoint's issues for an additional 45 measures, and that the remaining 7 PMs will be resolved in the normal course. (Id. ¶ 53.)

98. The remaining 9 "Not Satisfied" test points for PMR 1 in the February 28, 2003 report related to data retention. On October 30, 2002, SBC Indiana reported to BearingPoint that 100 percent of the reported performance metrics, source system unique elements, and system of records are now retained in the manner specified by BearingPoint. (Id. ¶¶ 40-42.) SBC Indiana advises that on January 9, 2003, BearingPoint provided a status report to the five state commission staffs and SBC Indiana, and confirmed that SBC Midwest's Data Retention Policies were accurate for all performance measures reported in all five states. As a result of that review, BearingPoint closed Exception 19 on February 18, 2003, and in so doing it stated that SBC Indiana had provided data retention policy documentation for the source systems and systems of record for reported performance measurements. According to SBC Indiana, BearingPoint has verified that the retention periods are consistent with regulatory requirements in Illinois, Indiana, Michigan, Ohio and Wisconsin. BearingPoint then opened a new, more narrow exception (number 186) to address remaining issues. (Id. ¶¶ 43-45.)

99. SBC Indiana explains that Exception 19 originally addressed data retention issues for over 60 source data systems. SBC Indiana states that BearingPoint has now validated data retention documentation for all of those systems, noting that the documentation was both complete and accurate. Thus, Exception 186 narrows the number of source data systems still under review to 10 systems. Of those 10, BearingPoint has verified that 6 systems retained data for more than one year, and that 3 have been meeting appropriate retention guidelines for at least six months. The 10th "system is a "DUF Parity" file. SBC Indiana points out that it disagrees with BearingPoint's view that the "DUF Parity" file constitutes a source record that must be maintained, on the grounds that the data are retained in other systems and that the "DUF Parity" file would be redundant. Nevertheless, SBC Indiana states, it has been retaining 90 days' worth of data while BearingPoint makes a final determination. With the exception of the "DUF Parity" file, SBC Indiana asserts that it has been meeting data retention requirements during the November 2002 – January 2003 period that this Commission is reviewing for checklist compliance. (Id. ¶ 45.)

100. With regard to the restatement of previously reported performance results, SBC Indiana informs that BearingPoint has closed Exception 20 on this issue and in so doing BearingPoint stated in unambiguous terms that "BearingPoint is no longer using restatement frequency as a general indicator of procedural and control deficiencies." According to SBC Indiana, BearingPoint has moved all 18 test points (PMR1-4) previously scored as "Not Satisfied" for this reason to "Indeterminate" status. (Id. ¶¶ 37-

39) SBC Indiana adds that the number of restatements does not bear on their materiality. Considering the materiality of restatements (that is, the restatements that actually caused a particular result to change from “pass” to “fail” or vice versa), rather than the number of restatements, SBC Indiana’s restatement rate for January through December 2002 data months is less than one percent of reported results. (SBC Comments at 36).

101. The remaining PMR 1 test criteria, which address data processing capacity and procedures for future reports, are currently “Indeterminate”. According to SBC Indiana, BearingPoint has not identified a problem, it simply has not completed its analysis. SBC Indiana states that it and BearingPoint have developed a plan to complete the PMR 1 evaluation, along with specific tasks and target dates. (Id. ¶ 33.) SBC Indiana notes that these efforts have already resulted in an additional 20 points deemed “satisfied.” (Id.)

PMR 4 (Metrics Data Integrity)

102. PMR 4, which evaluates the accuracy and completeness of transferring data from the point of collection to the point of reporting, and then converting raw data to processed data, is not substantially complete. SBC Indiana states that 24 of the 40 applicable test criteria were “Indeterminate” as of the February 28 report, while 2 were satisfied and 14 were “not satisfied.” Since then, SBC Indiana states, the number of satisfied criteria has increased to 4, the number of indeterminate criteria has increased to 16, and the number of “Not Satisfied” criteria has decreased to 10, all of which are in the process of re-testing. (SBC 5/1/03 Ehr Aff. ¶ 61.) SBC Indiana and BearingPoint have developed a detailed project plan that identifies each of the activities required to complete the PMR 4 evaluation, along with specific tasks and target dates. According to SBC Indiana, each of the 10 test criteria classified as “Not Satisfied,” is expected to be successfully resolved, and none of them reflect a material performance reporting issue. (Id. ¶¶ 63-76.)

103. SBC Indiana states that a substantive review of the PMR4 observations and exceptions shows that testing has made significant progress. As of February 28, 2003, SBC Indiana informs, BearingPoint had issued 12 exceptions relating to Data Integrity (PMR4). In all, SBC Indiana states, six PMR4 exceptions have been closed, and SBC Indiana has provided BearingPoint with responses to the other 6, which are being retested. (SBC 5/1/03 Ehr Aff. ¶¶ 71-72.)

104. Of the 18 observations for PMR4, SBC Indiana advises that 17 are in Closed (Satisfied) status, meaning there is no longer an issue. SBC Indiana states that the only “open” observation for PMR4, Observation 832, was opened on April 1, 2003, and SBC Indiana was in the process of responding. (Id. ¶ 73.)

PMR 5 (Metrics Calculation and Reporting)

105. PMR 5 evaluates the processes used by SBC to calculate performance results, and assesses the consistency of SBC’s metric calculations to the Commission’s

approved business rules for each performance measure reported by SBC. Similar to PMR 4, this test is still in progress. As a result, 22 of the 72 test criteria were assessed as "Satisfied" as of February 28, while 14 were "Indeterminate," and 36 were assessed "Not Satisfied," based on testing of July 2002 data. (SBC 5/1/03 Ehr Aff. ¶ 79.)

106. For the individual test points, SBC Indiana states that it is satisfying PMR5-1 for all 18 measure families. For PMR5-2, "blind replication," SBC Indiana states that many issues are resolved through communication between the parties as facilitated by the Observation, Exception, and Notification Report process. For PMR 5-3 and PMR 5-4, SBC Indiana claims that BearingPoint does not allow for "interpretations" of business rules, and that this affects the PMR 5 scoring. Considering only those Observations for which BearingPoint has concluded its testing, SBC Indiana claims that many (14 Observations and 1 Exception) are simply due to business rule interpretations, which it addressed in the discussion of the E&Y audit. Of these "Not Satisfied" Observations, SBC Indiana has clarified the business rules and asserts that the CLECs have agreed to the approval of the changes by the Commission.²⁶ The other 4 issues are pending modifications in the next six-month review. (*Id.* ¶¶ 88-96.)

107. In all, SBC Indiana states, BearingPoint has issued only 2 Exceptions in the PMR5 section of the test. One, Exception 111, is in retest with BearingPoint. SBC Indiana states that on February 17, 2003, it updated its response to this exception and addressed each of BearingPoint's issues (as of February 17). Meanwhile, SBC Indiana states Exception 113 involves a disagreement on the interpretation of the business rule for Performance Measure 2 (Average Response Time for Pre-Order Interfaces). BearingPoint's perspective was that the response times should include the time for protocol translation. SBC Indiana states that the disagreement on this issue is now a moot point, as CLECs did not oppose in the six-month review session the implementation of a separate measurement category for protocol translation time. (SBC 5/1/03 Ehr Rebuttal Aff. ¶¶ 91-92.)

2) Other Assurances of Reliability

108. SBC Indiana notes that it has made underlying raw data available upon CLEC request and that several CLECs have requested and received such data. SBC Indiana further states that its affiliates in Michigan, Illinois, and Ohio have been obligated for some time to conduct a data reconciliation upon request by a CLEC to address the accuracy of any reported data in comparison to the CLEC's own records and, if the issue is not resolved, submit to a mini-audit of the specific performance measure in question. However, SBC Indiana observes, not one CLEC requested a data reconciliation or mini-audit in SBC Indiana or other SBC Midwest state until early this year, when AT&T requested a reconciliation with respect to one measure. (SBC 3/14/03 Ehr Aff. ¶¶ 205-211.)

²⁶ On June 26, 2003, the IURC approved Version 1.9 of the SBC Midwest PM user Guide, with the exception of several attachments and appendices that pertained to the calculation and application of remedies but did not affect the business rules.

109. With respect to internal controls, SBC Indiana states that as a result of feedback received during the BearingPoint test, it has implemented improvements to its internal controls and to its documentation of performance measurement procedures. According to SBC Indiana, some of the more significant control steps include (a) copying and storing both the input and output files for performance data; (b) using numerical control records in the header and trailer of the input and output files to ensure that all records are processed; and (c) processing data more than one time, and cross-checking the results for accuracy. (Id. ¶¶ 212-213.)

b. AT&T Position.

110. AT&T submitted Comments and an Affidavit of Timothy M. Connolly on May 27, 2003 pursuant to the Docket Entry of April 23, 2003 ("AT&T 5/27/03 Comments" and "AT&T 5/27/03 Connolly Aff.") AT&T contends that the number of "restatements" of previously reported results suggests that the performance measurement systems are unstable. (AT&T 5/27/03 Connolly Aff. ¶¶ 103-113.) Mr. Connolly also describes a June 20, 2002 Special Open Meeting of the Illinois Commerce Commission where BearingPoint was questioned as to what would happen if the metrics are not evaluated correctly. (Id., ¶ 42.)

111. AT&T's Mr. Connolly asserts several procedural and substantive defects in the E&Y auditing process, including the following: (a) lack of any military-style testing; (b) E&Y's assumption that the raw data provided by SBC Indiana was accurate; (c) the test was limited in scope; (d) the materiality definition of E&Y is flawed and misguided; (e) E&Y did not use a Test CLEC like the BearingPoint test; (f) E&Y did not consult with third parties; (g) E&Y's review of computer program code was inadequate; and (h) E&Y used outdated source systems. (Id. ¶¶ 114-129). AT&T also states that E&Y accepted without challenge SBC's erroneous applications of the business rules. (Id. ¶¶ 130-132.)

c. WorldCom Position

112. WorldCom filed Comments and an affidavit of Ms. Sherry Lichtenberg on May 27, 2003 ("WorldCom 5/27/03 Comments" and "WorldCom 5/27/03 Lichtenberg Aff."). WorldCom questions the independence of E&Y because E&Y also audits SBC financial statements. WorldCom challenges the scope of the E&Y audit, and states that no competitors or the Commission had input into either structuring the test or providing information that became part of its evaluation. (WorldCom 5/27/03 Comments at 9). WorldCom states that in evaluating whether SBC took corrective action, E&Y only looked to see whether SBC had made system coding changes - instead of looking to see if the coding changes resulted in correct calculations of metrics in subsequent months. As such, WorldCom contends that there will be no assurance about the effectiveness of corrections until an audit is conducted. (WorldCom 5/27/03 Lichtenberg Aff. ¶ 73.)

d. OUCC Position.

113. The Indiana Office of Utility Consumer Counselor also provided comments on May 27, 2003. (OUCC 5/27/03 Comments) The OUCC stated that the Ehr 3/24/03 affidavit provided an impressive and comprehensive review, but suggests that the data show declining performance for the period in question. OUCC states 28 measures were “failed” for November 2002, while 40 measures were “failed” for December 2002 and January 2003. (OUCC 5/27/03 Comments, at 4-5)

114. The OUCC agrees that for the most part the E&Y audit determined that the operations and calculations of SBC Indiana relative to the third-party OSS test match the Indiana business rules, but it does have two concerns: (a) the independence of E&Y; and (b) the fact that E&Y provided advance notice of site visits. (OUCC 5/27/03 Comments, at 6-7.)

e. SBC Indiana Update (based upon BearingPoint May 12, 2003, Report)

1) Updated BearingPoint Performance Metric Review

115. On May 12, 2003 BearingPoint provided the IURC with an updated report on the PMR testing. The total number of “Satisfied” test points increased from 84 as of the February 28 report to 129 as of the May 2003 report. The number of “Not Satisfied” points dropped from 86 to 66 and the number of “Indeterminate” test points dropped from 100 to 75. (SBC Comments at 25.)

Collection and Storage of Data (PMR 1)

116. SBC Indiana reports that the number of PMR1 test points that are “Satisfied” has more than doubled the number on the February 28, 2003 report (the number increased from 30 to 65). SBC Indiana also reports that BearingPoint categorizes 30 test points as “Indeterminate” (down from 62 as of February) and 31 as “Not Satisfied.” (Id. at 29.)

117. For PMR1-1 and 1-2, SBC Indiana reports that it has aggressively worked to resolve the remaining issues with Exceptions 187 and 188. (Id. at 32-33.) According to SBC Indiana, BearingPoint now finds that 52 measures associated with Exception 187 have been confirmed as being accurate and BearingPoint continues to review 42 measures. SBC Indiana has responded to BearingPoint for thirty-seven measures and is completing its work on the remaining 5 measures to fully respond to BearingPoint. (Id.)

118. SBC Indiana also reports that BearingPoint has confirmed the documentation accuracy for 41 measures included under exception 188. BearingPoint continues to review 52 measures, of which SBC Indiana reports it has provided BearingPoint with a full response for 36 measures. SBC Indiana is responding to the remaining 16 measures, all of which require that data element maps and data flow diagrams be updated. (Id. at 33-34.)

119. For PMR1-4, SBC Indiana points out that BearingPoint has determined that 12 test points are now "Satisfied" and the remaining 6 are "Indeterminate," all of which confirm that SBC Indiana has adequate controls and edits of its metrics data processing procedures to ensure accurate metrics calculations and reporting. There are no test points considered "Not Satisfied." (Id. at 34-37)

120. PMR1-6 evaluates SBC Indiana's data retention. SBC Indiana states that 7 test points are "Satisfied," 10 are "Not Satisfied," and 1 is "Indeterminate." Exception 186 was opened to address this issue and SBC Indiana reports that 75 of 85 systems were identified by BearingPoint as satisfying all data retention requirements, and the 10 remaining systems are retaining historical data although for less than the 18 months of historical data retention required by BearingPoint. Of these 10 systems, 2 are now retaining at least 18 months of data, 5 are retaining for at least one year, and 2 systems are retaining data for at least six months. Only one system, the DUF Parity File, is retaining data for less than 6 months, and this is because SBC Indiana disputes BearingPoint's finding that it is a source or reporting system. (Id. at 37-40)

121. For PMR1-3, 1-5, and 1-7, SBC Indiana reports that BearingPoint's May 12 report shows that there are 39 of 54 test points that are "Satisfied" while the remaining 15 test points are "Indeterminate" (none of the test points are considered "Not Satisfied"). (Id. at 40) In the previous report, only 20 points had been "Satisfied."

Metric Definitions and Standards (PMR 2)

122. SBC Indiana notes that no one raised an issue about this aspect of the test. All three test points continue to be classified as "Satisfied." (Id. at 27-28)

Performance Measurement Change Management (PMR 3)

123. As of BearingPoint's February Report, SBC Indiana satisfied 27 of the 29 test points. The May Report now shows all 29 of the test points as "Satisfied." (Id. at 28)

Metrics Data Integrity (PMR 4)

124. SBC Indiana reports that BearingPoint is still testing. Five test points were "Satisfied," nine were "Not Satisfied" and were in "Retest," and 26 were "Indeterminate." Six of twelve exceptions issued in this test area are now closed as "Satisfied" and SBC Indiana reports it has provided BearingPoint with a full response to the remaining six exceptions (although only five apply to Indiana). The five exceptions that apply to Indiana are 134, 175, 176, 181, and 183 and accounted for the nine test points that were "Not Satisfied." BearingPoint is retesting all five of these exceptions. (Id. at 49). SBC Indiana maintains that none of the nine test points that were not satisfied reflect a material performance reporting issue, particularly given that, in SBC's opinion, the E&Y audit covers the PMR4 review and demonstrates that SBC Indiana's results are reliable. (Id.)

Metrics Calculation and Reporting(PMR 5)

125. SBC Indiana reports that 27 of 72 PMR 5 test points are "Satisfied" and 19 are "Indeterminate." There are four test criteria used by BearingPoint in its PMR5 evaluation, which involves BearingPoint's ability to replicate performance results. SBC Indiana points out that all 18 test points for criteria 1 are "Satisfied" demonstrating that SBC Indiana includes required metrics in Performance Measurement Reports. (Id. at 59).

126. Criterion 2 is Blind Replication. SBC Indiana reports that 7 test points are "Satisfied" and 2 are "Not Satisfied" while the remaining 9 are "Indeterminate." SBC Indiana reports that corrective actions have been applied on a going forward basis, resolving the issues associated with two observations that were closed without being satisfied. (Id. at 59-60).

127. SBC Indiana states that Criterion 3 assesses whether SBC Indiana calculates performance results in accordance with BearingPoint's reading of the business rules. SBC Indiana reports that business rule clarifications have been made in the recently completed six-month review and SBC Indiana expects additional clarifications to be made in the next six-month review in August 2003. These modifications, combined with corrective actions made on a prospective basis, will allow BearingPoint to satisfactorily complete its testing of PMR5-3, according to SBC Indiana. (Id. at 60-62).

128. SBC Indiana reports that Criterion 4 evaluates whether SBC Indiana's implemented exclusions are in accordance with BearingPoint's literal reading of the business rules. One test point is "Satisfied," and 4 are "indeterminate" while 13 are "Not Satisfied." Of 23 observations that are "Closed, Not Satisfied," SBC Indiana reports that all are either unresolved for the data months being tested because the issues were resolved by corrective actions implemented going forward (11) or will be resolved when business rule clarifications are used by BearingPoint (12). SBC Indiana reports that eight business rule interpretations have been addressed in the most recent six month review and another four will be address at the next review. (Id. at 63)

3. Commission Review and Conclusions

a. The Interim Status Of BearingPoint's Performance Metric Review

129. While E&Y's audit of performance results is complete, BearingPoint's own review of SBC Indiana's performance measurements is not. The present status of BearingPoint's review raises two questions. The first is procedural: whether the completion of BearingPoint's review is an absolute prerequisite for assessing checklist compliance, or in other words whether the ongoing nature of BearingPoint's review constitutes an absolute bar to going forward. The FCC has answered that question in favor of the approach advocated by SBC Indiana. The FCC has never required that all performance audits be complete at the time of an application. Instead, it has not only considered but approved section 271 applications where an audit was incomplete

(Georgia & Louisiana 271 Order, ¶¶ 17, 19) so long as there were reasonable assurances that the reported results were reliable:

Several commenters challenge the validity of the data provided by BellSouth. . . . We recognize that BellSouth's data continues to be subjected to third-party audit, but we cannot as a general matter insist that all audits must be completed at the time a section 271 application is filed at the Commission." Georgia & Louisiana 271 Order, ¶¶ 17, 19.

130. The BearingPoint performance measure audit has uncovered significant questions about the reliability of SBC's performance measure results, the integrity of the underlying data, and the adequacy of SBC's various performance measure systems and the controls for those systems, databases, and data. SBC appears to have corrected many of those problems. The BearingPoint performance measure audit, like all of the other portions of the BearingPoint OSS test, is designed as a "test until you pass" test. All parties – including SBC – agreed to this "test until you pass" structure. Because SBC has not yet passed many portions of the PM Audit, it is not possible for the IURC to conclude at this time that SBC's reported results are either reliable or unreliable. SBC is correct that the FCC has not found the incomplete status of an audit to be an absolute bar to the granting of Section 271 authority so long as there were reasonable assurances that the reported results were reliable. In this case, because we cannot conclude that the reported results are, or are not, reliable, we refer to the FCC both the substantive issues surrounding SBC's performance measure results, data, systems, and processes; and the procedural issue of whether, for the Section 271 application of SBC Indiana, the BearingPoint performance measure audit is far enough along to support the granting of Section 271 in-region long distance authority.

131. AT&T posed the issue as: whether SBC Indiana has satisfied the "exit criteria" for BearingPoint's test. SBC Indiana is not asking to exit the test. We have previously noted SBC's commitments to continue the BearingPoint PM Audit and have taken SBC at its word.²⁷ Thus, because we have referred the procedural question to the FCC of whether SBC's failure to complete the PM Audit at this time is a bar to SBC Indiana receiving Section 271 authority, the remaining question before the Commission is substantive in nature: whether the totality of the evidence provides the Commission with reasonable assurance that SBC Indiana's reported results are accurate, even in the absence of a completed review by BearingPoint.

132. Regarding the proper allocation of the "burden of proof", the burden of proof in this proceeding rests squarely on SBC, under both FCC and IURC requirements.²⁸ SBC Indiana asserts that the totality of the evidence provides sufficient assurance as to the reliability of its reports. As noted above, the Commission refers the validity of this assertion to the FCC.

133. SBC Indiana has addressed the current status and interim results of BearingPoint's test in detail. SBC asserts that BearingPoint's findings to date were not

²⁷ July 2 Compliance Order, Attachment One, p. 3.

²⁸ October 31, 2002, Process Order, p. 14.

material to the Commission's assessment of overall checklist compliance. SBC argues that the opposing analysis of AT&T and WorldCom is both inaccurate and incomplete.

134. First, according to SBC, the commenters do not adequately describe what BearingPoint's findings mean, in other words, what led BearingPoint to issue an exception. Second, according to SBC, the commenters fail to address (and in some cases ignore) what happened after BearingPoint issued its exception. SBC Indiana has already responded to most of the current Observations and Exceptions, and BearingPoint is in the process of re-testing those Observations and Exceptions for which SBC has consented to re-testing and for which re-testing is possible. Since the BearingPoint Report, BearingPoint has already closed several exceptions, and significantly narrowed others. However, the scope of some exceptions has been expanded in some areas and narrowed in others. BearingPoint continues to report significant metrics-related problems.

135. Based upon our analysis of the three months of commercial results that SBC submitted, there appear to be three problems: missing results, low volumes of transactions, and internal inconsistencies – e.g., both missing results and low volumes for the same performance measure or submeasure. We recognize that SBC Indiana will submit the results for a more recent set of three months to the FCC. We also recognize that, in the course of the BearingPoint testing and re-testing process, SBC may take some corrective actions that may eliminate some of the reporting problems and inconsistencies. It is also possible that some of the low volumes of some types of commercial transactions may indicate a lack of demand by CLECs for the related products or services. We defer to the FCC to determine whether one or more of these factors may mitigate the inconsistencies we have observed for the three months of commercial results for November and December, 2002, and January, 2003. Similarly, we defer to the FCC to determine whether one or more of these factors may mitigate the unreliability of certain of SBC's performance results, certain underlying data, and certain documentation demonstrated over the course of the BearingPoint performance measure audit, which has yet to be completed. Similarly, we leave it to the FCC to determine whether the problems that BearingPoint has reported regarding the accuracy of SBC Indiana's reported performance results, and the reliability and integrity of the underlying data, may also affect the three months of commercial results that SBC submitted to the FCC for Indiana. We defer to the FCC to investigate these possible inconsistencies further. We discuss the BearingPoint PM audit, and metrics and data-related issues further in the introduction to Section VI.C.

b. "Restatements" Of Previously Reported Performance Results

136. AT&T contends that SBC Indiana's data are unreliable based, in part, on the existence and number of corrections or "restatements" SBC Indiana has made to past reports. However, that argument is refuted by BearingPoint, which closed Exception 20 and stated in unambiguous terms that "BearingPoint is no longer using restatement frequency as a general indicator of procedural and control deficiencies."

137. At any rate, the FCC has held that the existence of restatements means only that performance reporting is an “inherently complex and iterative” process, and the existence of “regular corrective activity does not demonstrate systemic infirmities as an end in itself.” New Jersey 271 Order, ¶ 91. SBC Indiana asserts that the rate of restatements that actually changed a particular result from “pass” to “fail” in the past year was less than one percent of reported results. Finally, the FCC has rejected such contentions for other RBOCs under circumstances that may or may not be similar to the circumstances of SBC’s four-state section 271 filing. See, e.g., New Jersey 271 Order, ¶ 90 (“We reject the arguments made by AT&T and other parties that challenge the reliability of Verizon’s data on the basis of the sheer volume of the changes and corrections that Verizon made to its processes for including the relevant data.”); Georgia & Louisiana 271 Order, ¶ 17,19 (CLEC claims that “the pattern of restatements of the data by BellSouth and BellSouth’s acknowledgements of problems with certain metrics mean that the data is not stable enough to be relied upon” not sufficient reason to reject the application).

Audit Of March-May 2002 Data

138. While we have other concerns regarding the Ernst & Young audit, the Commission rejects AT&T’s assertion that E&Y’s report should be disregarded because E&Y audited results for the months of (March-May 2002), while the Commission is analyzing checklist compliance based primarily on November - January data. Neither this Commission nor the FCC has ever required that the auditor must examine the exact same data submitted with a section 271 application. Such a requirement would be impossible to carry out. In the months the auditor took to complete its work on the data submitted for review, commercial activity would continue, and new performance results would be published.

Testing Of “Raw Data” And Data Integrity

139. There is no legal requirement that a “pseudo-CLEC” be used. Further, the Commission notes that BearingPoint submitted “pseudo-CLEC” transactions as part of its operational test, and that the test results generally show that SBC Indiana’s OSS successfully processed those transactions.

c. Additional Assurances of Reliability

140. SBC argues that the Commission can find additional assurances of reliability from three sources: the data reconciliation process, SBC Indiana’s improvements in internal controls, and the results of the BearingPoint test. We discuss each of these sources below.

141. The FCC has recognized that a BOC’s readiness “to engage in data reconciliations with any requesting carrier” provides valuable assurance as to the reliability of the BOC’s data. Georgia & Louisiana 271 Order, ¶ 18. Further, when “the [state] Commission has established a process for competitive LECs to bring concerns about data integrity to them,” and “no competitive LEC has done so,” the FCC finds the

absence of CLEC action to constitute probative evidence that the applicant's data are reliable. *Id.* Since 2000, SBC Indiana and its affiliates have provided each participating CLEC with monthly reports of wholesale performance, showing results for that CLEC and for CLECs in the aggregate along with the appropriate retail analogs and benchmarks. Further, SBC Indiana has made the underlying raw data available upon request, and several CLECs have requested and received such data. SBC states no CLEC has requested a data reconciliation or mini-audit in any one of the SBC Midwest states until recently, when one CLEC (AT&T) requested a data reconciliation with respect to one measure, with the results showing no error in the aggregate (only a misallocation among competing LECs).

142. We defer to the FCC to determine if the limited experience of one CLEC (AT&T) would permit the FCC to reach the same conclusion it reached in the BellSouth GALA II order, and quoted above. We would, however, observe that, in several of the SBC Midwest states, the circumstances under which a CLEC may request a mini-audit are governed under a remedy plan. CLECs in Indiana have, for the most part, been unable to request a mini-audit over the last few years either because there was no remedy plan in existence, the remedy plan that did exist precluded mini-audits while the BearingPoint OSS test was under way, or because they had not opted into a remedy plan that had mini-audit provisions. We note that there is no reference to "mini-audits" in the SBC/Ameritech Indiana section 271 remedy plan; thus, it appears that this limitation will remain in place.

143. Next, as a result of feedback received during the BearingPoint test, SBC Indiana has implemented improvements to its internal controls and to its documentation of performance measurement procedures. Some of the more significant control steps include (a) copying and storing both the input and output files for performance data; (b) using numerical control records in the header and trailer of the input and output files to ensure that all records are processed; and (c) processing data more than one time, and cross-checking the results for accuracy. These improvements have had concrete results; as described below, SBC Indiana has made substantial progress in closing many of the exceptions previously identified by BearingPoint.

144. Finally, BearingPoint's testing of actual wholesale processes and transactions may provide relevant information in two respects. First, for those products, services, transactions, transaction types, systems, and interfaces that BearingPoint tested, the results of its process reviews and transactions tests suggest that SBC Indiana generally provides access to CLECs in a nondiscriminatory fashion. Unless otherwise stated, we defer to the FCC the question of whether the results of the OSS transaction testing and process and procedures review are sufficient to support the granting of SBC Indiana's section 271 application, absent conclusive performance results and valid, reliable, and stable data underlying the results.

145. We also note that BearingPoint observed significant problems for pre-order timeliness; however, there were no significant degradations to pre-order

functionality even at Peak Volumes (150% of normal volumes).²⁹ It is expected that the pre-order timeliness plan, when implemented as approved, will lead to noticeable improvements (decreases) in the average duration of the protocol translation times for certain pre-order transactions. It is unclear whether, and to what extent, the implementation of the pre-order timeliness plan will decrease the average duration of the remaining portion of the pre-order transactions (excluding protocol translation times). Second, the detailed results of BearingPoint's transactions tests include BearingPoint's own, independent measurements of performance. BearingPoint's recorded times and its overall test results match up favorably with those reported by SBC Indiana.

B. Competitive Checklist: Section 271(c)(2)(B)

1. CHECKLIST ITEM 1 – Interconnection

a) Description of Checklist Requirement

146. Section 271(c)(2)(B)(i) of the Act requires a Section 271 applicant to provide: “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).” 47 U.S.C. Section 271 (c)(2)(B)(i).

b) Standards For Review

147. In the First Report and Order (¶ 176), the FCC concluded that interconnection referred “only to the physical linking of two networks for the mutual exchange of traffic.” As such, the transport and termination of traffic is excluded from the FCC’s definition of interconnection. Id.

Statutory Incorporation - Section 251

148. Section 251(c)(2) imposes, on incumbent LECs, the duty “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c)(2)(A). It further sets out three requirements for the provision of interconnection.

149. First, an incumbent LEC must provide interconnection “at any technically feasible point within the carrier’s network.” 47 U.S.C. § 251(c)(2)(B) (emphasis added). Second, an incumbent LEC must provide interconnection that is “at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate or any other party. 47 U.S.C. § 251(c)(2)(C) (emphasis added). Third, the incumbent LEC must provide interconnection “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252.” 47 U.S.C. § 251 (c)(2)(D) (emphasis added).

²⁹ For pre-order timeliness, see Exceptions 112 and 113.

150. Competing carriers may choose any method of “technically feasible” interconnection at a particular point on the incumbent LEC’s network. Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements. The provision of collocation is an essential to demonstrating compliance with item 1 of the competitive checklist. In the Advanced Services First Report and Order³⁰, the FCC revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.

151. In response to a remand from the D.C. Circuit, the Commission adopted the Collocation Remand Order³¹, establishing revised criteria for equipment for which incumbent LECs must permit collocation, requiring incumbent LECs to provide cross-connects between collocated carriers, and establishing principles for physical collocation space and configuration. Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, help the Commission evaluate a BOC’s compliance with its collocation obligations.

152. To implement the “equal-in-quality” requirement in section 251, the FCC’s rules require an incumbent LEC to design and operate its interconnection facilities to meet “the same technical criteria and service standards” that are used for the interoffice trunks within the incumbent LEC’s network. In the First Report and Order, the FCC identified trunk group blockage and transmission standards as indicators of an incumbent LEC’s technical criteria and service standards as indicators of an incumbent LEC’s technical criteria and service standards. In prior section 271 applications, the FCC concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal in quality to the interconnection the BOC provided to its own retail operations.

153. In the First Report and Order, the FCC concluded that the requirement to provide interconnection on terms and conditions that are “just, reasonable, and nondiscriminatory” means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations. The FCC’s rules interpret this obligation to include, among other things, the incumbent LEC’s “installation time” for interconnection service, and its provisioning of two-way trunking arrangements. Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under “terms and conditions that are no less favorable than the terms and conditions” the BOC provides to its own retail operations.

³⁰ Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999).

³¹ CC Docket No. 98-147 (rel. July 12, 2001).

Statutory Incorporation - Section 252 (d)(1)

154. Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit. 47 U.S.C. § 252 (d)(1). The FCC's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.

155. To the extent that pricing disputes arise, the FCC will not duplicate the work of the state commissions. As noted in the Texas 271 Order, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law. Although the FCC has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel it to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the FCC's pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.

156. Consistent with the FCC's precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as:

- (a) an interim solution to a particular rate dispute is reasonable under the circumstances;
- (b) the state commission has demonstrated its commitment to the Commission's pricing rules; and
- (c) provision is made for refunds or true-ups once permanent rates are set. New York 271 Order, ¶ 258.

157. In addition, the FCC has determined that rates contained within an approved section 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state. Although the FCC has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding.

c) The Evidence, Arguments and Positions

1) SBC Indiana Position

Interconnection Trunking

158. Interconnection is the process whereby two carriers physically connect their networks so that an end user served by one carrier can call an end user served by

the other carrier, and vice versa. The physical place where the two networks meet is referred to as the points of interconnection ("POIs").

159. SBC Indiana contends that it provides interconnection to competing carriers as required under Section 251(c)(2). Testimony in support of these assertions was provided by SBC Indiana witness Deere.

160. SBC states that the FCC's rules require an ILEC to make any technically feasible form of interconnection available, including physical and virtual collocation and meet-point arrangements (where a CLEC's fiber optic cable is connected to the ILEC's fiber optic cable at a point between a CLEC's premises and an ILEC's tandem or end office). See 47 C.F.R. § 51.321(a)-(b). SBC Indiana contends that it makes all required forms of interconnection available pursuant to binding interconnection agreements. (SBC 9/26/02 Deere Aff. ¶ 14). A CLEC can interconnect its network with SBC Indiana's network at any of the many points required by the applicable FCC rule, i.e., 47 C.F.R. § 51.305(a)(2), as well as at other technically feasible point upon request. (SBC 9/26/02 Deere Aff. ¶¶ 15-31). Further, CLECs, at their discretion, can obtain a single point of interconnection ("SPOI") per LATA, or may choose to interconnect at multiple points per LATA. (*Id.* ¶ 32).

161. SBC Indiana states that it uses standard trunk traffic engineering methods to ensure that interconnection trunking is managed in the same manner as the trunks used to carry its own local services. (*Id.* ¶ 42). In order to ensure nondiscrimination, SBC Indiana states that it interconnects with CLECs using the same facilities, interfaces, technical criteria, and service standards that it uses for its own retail operations. (*Id.* ¶¶ 42-49).

Collocation

162. In accordance with Section 251(c)(6) and the rules set out in 47 C.F.R. § 51.321, and 47 C.F.R. § 51.323, SBC Indiana maintains that it makes available, to CLECs, collocation of telecommunications equipment necessary for interconnection and access to unbundled network elements. ("UNEs") (SBC 9/26/02 Alexander Aff. ¶ 12.) The SBC Indiana terms and conditions for collocation are provided in binding interconnection agreements and through its effective collocation tariff. *Id.*

163. Physical collocation of CLEC equipment is available, SBC Indiana asserts, where space permits. (*Id.* ¶ 21). Also, SBC Indiana makes available caged, shared cage, cageless and other physical collocation arrangements, all at the option of the CLEC. (*Id.*). These offerings, SBC Indiana contends, fully comply with the FCC's collocation rules. (*Id.* ¶ 12). Adjacent space collocation is available on SBC Indiana's premises when all space available for physical collocation within an SBC Indiana Eligible Structure is legitimately exhausted. (*Id.* ¶ 30).

164. SBC Indiana contends that it also makes available other technically feasible arrangements consistent with Paragraph 45 of the Advanced Services Order ("ASO"), which provides that "deployment by any incumbent LEC of a collocation

arrangement gives rise to a rebuttable presumption in favor of a competitive LEC seeking collocation in any incumbent LEC premises that such an arrangement is technically feasible." (SBC 9/26/02 Alexander Aff. ¶ 32.)

165. Where SBC Indiana must deny a CLEC's request for physical collocation because space is not available, it informs the CLEC by letter within ten days. (*Id.* ¶ 33). The Company also has modified its internal procedures to ensure that if it denies collocation on the grounds that a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit will contain all the information required by the Advanced Services Reconsideration Order, ¶ 57 (revising 47 C.F.R. § 51.323(b)) (SBC 9/26/02 Alexander Aff. ¶ 45). Further, if space is not available to accommodate the CLEC's request, the CLEC may request a tour of the premises. (*Id.* ¶ 34). Consistent with 47 C.F.R. § 51.321(f), SBC Indiana maintains, this tour is scheduled within five business days from the date that the CLEC's written tour request is received. (SBC 9/26/02 Alexander Aff. ¶ 34.)

166. In addition, SBC Indiana indicates that it maintains a publicly available document on the Internet indicating those facilities, if any, which currently are full. According to SBC Indiana, this list is updated within ten days of the date a central office is determined to be out of physical collocation space. (*Id.* ¶ 36). SBC Indiana ensures that only offices that do not have a minimum of one bay space for physical collocation are posted on this list. (*Id.*). Moreover, prior to submitting an application for physical collocation, a CLEC may request a report that indicates the available collocation space in a particular SBC Indiana premises. (*Id.* ¶ 37).

Space Reservation

167. SBC Indiana states that its space reservation policies are nondiscriminatory. (*Id.* ¶ 38). Per the requirements of 47 C.F.R. § 51.323(f), SBC Indiana does not, and will not, allow any of its affiliates to reserve space on terms more favorable than those that apply to unaffiliated CLECs. (SBC 9/26/02 Alexander Aff. ¶¶ 38); Advanced Services Reconsideration Order, ¶ 53. Moreover, SBC Indiana has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market. (SBC 9/26/02 Alexander Aff. ¶¶ 38-39). It also conserves physical collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain a single rack or bay of equipment. (*Id.* ¶ 24).

168. SBC Indiana employs security measures for collocators in its central offices ("COs") to reasonably protect its network and equipment from harm, and these measures, it contends, are no more stringent than the security arrangements it maintains on premises for its own employees or authorized contractors. (SBC 9/26/02 Alexander Aff. ¶ 40.) So too, CLEC personnel are not required to undergo security training that is more stringent or intensive than the training undergone by SBC Indiana personnel, nor are they required to obtain training from SBC Indiana. (*Id.* ¶ 41). SBC Indiana maintains that it does not impose security measures any more stringent than those permitted by the FCC. (*Id.* ¶ 40).

169. "Virtual collocation", SBC Indiana maintains, is available to CLECs regardless of the availability of physical collocation. (SBC 9/26/02 Alexander Aff. ¶ 46.) SBC Indiana uses the same engineering practices for virtually-located equipment as it does for similar equipment of its own. (*Id.* ¶ 48). SBC Indiana also asserts that it will maintain and repair virtually-located equipment at the direction of the collocator using the same standards that it uses for maintaining and repairing its own equipment. (*Id.* ¶ 49).

Collocation Pricing

170. SBC Indiana developed cost studies for caged, cageless and virtual forms of collocation, which it submitted in Cause No. 40611. (SBC 9/26/02 Makarewicz Aff. ¶ 29). SBC Indiana contends these studies fully complied with the FCC's TELRIC methodology. (*Id.*)

2) WorldCom Issues/Position

Interconnection Pricing

171. With respect to pricing generally, WorldCom expresses two concerns. First, WorldCom contends that SBC Indiana has failed to demonstrate that all of its prices are TELRIC compliant or that rates have been established for all of its offerings. Therefore, WorldCom argues, SBC Indiana is not in compliance with the pricing requirements of the Act. Second, WorldCom expresses its concern that SBC Indiana may attempt to change those rates in the near future. For this reason, as well as other reasons, WorldCom argues that SBC Indiana's existing UNE rates should be capped for a period of up to five years to ensure rate certainty. It notes that AT&T takes a similar position. According to WorldCom, the Commission can determine that existing TELRIC rates should be capped for a period of not less than five years on the basis that the telecommunications industry is a declining cost industry and the synergies from the SBC/SBC Indiana merger should further ensure that shared and common costs are going down. It is also WorldCom's position that the Commission should require SBC Indiana to withdraw its appeals of the Commission's TELRIC pricing orders. This, WorldCom argues, would provide certainty with respect to TELRIC rates for some time to come.

3) AT&T Issues/Position

Opt In Requirements

172. Section 252(i) of the Act, AT&T explains, sets out what has come to be known as the "opt in" rule. It allows CLECs to "opt in" to particular provisions of other carriers' interconnection agreements. AT&T focuses on two instances showing SBC Indiana's noncompliance with Section 252(i).

173. At the outset, AT&T contends, SBC Indiana refuses to allow CLECs to opt in to the reciprocal compensation provisions of existing interconnection agreements

entered into even after the date the FCC issued its ISP Order. AT&T Comments at 25-26.

Access to the CFA - Collocation

174. The record in this proceeding, AT&T contends, establishes that SBC Indiana does not provide CLECs access to the CFA at parity with the manner in which SBC Indiana may access it. Moreover, AT&T argues, SBC Indiana discriminates against CLECs in approving vendors for access.

175. CFAs, AT&T explains, are the basic interconnection points where ILECs connect their wires to a CLEC's network. The CFAs for individual end users refer to wire cross connects on wiring blocks at the Main Distribution Frame ("MDF") in the local CO. The MDF is where all the wires from the street terminate within the CO. In order for a CLEC to order a UNE loop, the CLEC must have a wiring block on the MDF with copper wires connected back to its collocation space.

176. Mr. Noorani testified that the key to addressing many CFA problems is testing the wiring between the AT&T collocation space and the MDF. In the SBC Indiana region, there are significant restrictions on completing such tests because CLECs generally are responsible for completing such testing themselves, and SBC Indiana severely limits CLEC access to the MDF.

177. While CLECs have 24-hour/7 day access to their collocation space, they have no right to access the MDF. AT&T can request an escort ticket to look at the MDF, but it is not permitted to conduct tests or touch any of the wiring. In order to test the wiring between the MDF and its DSLAM, AT&T asserts, a CLEC must hire a third party SBC Indiana approved contractor to arrange an appointment at the CO to conduct the tests.

178. It takes time, SBC Indiana complains, to hire an approved contractor and to schedule an acceptable time to conduct the tests. In the meantime, AT&T may be forced to stop ordering service at the affected CO because of a bad CFA. By contrast, SBC Indiana has full access to COs and can conduct such tests as the need arises. The requirement to hire outside third parties to remedy a situation that an in-house AT&T technician could resolve is an unnecessary expense. This is particularly true when contrasted to SBC Indiana's ability to use its own technicians when it needs to do so, AT&T contends.

Point of Interconnection ("POI") Policy

179. One difficulty with SBC Indiana's POI policy, AT&T asserts, is that in order for a CLEC to serve a LATA, the CLEC must first interconnect with SBC Indiana and establish a POI in the SBC Indiana *serving area* of the LATA. When a CLEC offers service in a LATA, however, it may get customers that sign up for its services in any geographic portion of the LATA. The geographic location of the CLEC customers in the LATA should not force the CLEC to interconnect with multiple service providers in the LATA and to establish multiple POIs in the LATA.

180. AT&T does not dispute that each carrier is responsible for delivering its originating traffic to the POI. Between the originating customer and the POI, it notes, the costs of delivery are identified as the origination costs, and the facilities that bring the traffic to that point are the interconnection facilities. From the POI to the terminating customer, the other carrier must assume operational responsibility to take that traffic to the designated end user and the originating carrier must pay the terminating carrier for the costs of that carriage. These costs associated with the terminating side of the POI are generally known as the termination costs.

181. If the call is local, AT&T comments, the originating carrier compensates the terminating carrier for that delivery pursuant to reciprocal compensation obligations as set forth in Section 251(b)(5). If the call is not local, then access charges rather than reciprocal compensation charges apply. The issue here involves the carrier's obligations with respect to local calls. Thus, by selecting a particular POI location, a carrier affects both the amount of reciprocal compensation it pays the other party and its own network costs.

182. AT&T states that the Act and FCC orders provide that new entrants may interconnect at any technically feasible point. Specifically, Rule 51.305(a)(2) obligates SBC Indiana to allow interconnection by a CLEC at any technically feasible point. In its First Report and Order (¶ 172), the FCC explained:

The interconnection obligation of section 251(c)(2)... allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.

183. Thus, AT&T observes, Section 251(c)(2) gives the CLEC the right to select where it wants to interconnect, thereby enabling it to establish, if it wishes, as little as one POI per LATA. This rule allows a single switch presence per LATA and enables new entrants to grow their business economically without having to duplicate the ILEC's existing network.

184. According to AT&T, the FCC has been clear in its support of a CLEC's right to choose where it wants to interconnect. It has consistently applied Section 251(c)(2) to prevent ILECs from increasing CLECs' costs by requiring multiple POIs. In its Texas 271 Order (¶ 78), the FCC emphasized, that this provision gives competing local providers the option to interconnect at even only one technically feasible point within each LATA.

185. Moreover, the FCC has found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, so sufficiently clear and compelling that the FCC has itself intervened in court reviews of interconnection disputes to make that very point. For example, in an interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires a

competing carrier to "interconnect in the same local exchange in which it intends to provide local service." The FCC stated:

Nothing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.

Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (No. CV 97-1575-JE) (D. Or. 1998).

186. In sum, AT&T argues, the FCC and numerous state commissions have consistently interpreted the Act to allow CLECs to interconnect at a single technically feasible POI chosen by the CLEC.

Direct End Office Trunking

187. AT&T takes issue with SBC Indiana's position on direct end office trunking - that every time the traffic between a CLEC switch and an SBC Indiana end office reaches the level of "1 DS1" the CLEC should establish direct end office trunking to that end office. SBC Indiana's rationale, AT&T notes, is that this helps avoid tandem exhaust in its network and the need to establish additional tandems due to the volume of CLEC traffic. AT&T objects to SBC Indiana's position because it is contrary to AT&T's right to select the locations at which it interconnects with SBC Indiana's network.

188. There are limits on a CLEC's ability to request interconnection, AT&T acknowledges, but the burden is on the ILEC to prove that such limits should be imposed. The applicable standard, AT&T asserts, is the technical feasibility standard and this standard sets the bar very high. The FCC has stated that in order for an ILEC to justify refusal to provide interconnection or access at a point requested by another carrier, it "... must prove to the state commission, with clear and convincing evidence that specific and significant adverse impacts would result from the requested interconnection or access." First Report and Order, ¶ 203.

189. According to AT&T, SBC Indiana has made no such showing of a "significant adverse impact" in this proceeding. Moreover, its position requiring AT&T to forfeit its right to interconnect at any technically feasible point on SBC Indiana's network if the traffic volume reaches "1 DS1's worth of traffic" is an extreme solution for a single spike in traffic volume.

190. The FCC has allowed CLECs the right to interconnect at any feasible point in the ILEC's network. By forcing them to go to the end office rather than terminate at the tandem, AT&T contends, SBC Indiana is placing arbitrary limits upon this important CLEC right.

Transit Traffic

191. AT&T notes SBC Indiana takes an almost identical position on transit traffic as it does on direct end office trunking. When traffic between a CLEC and another third party carrier reaches one DS1, SBC Indiana demands that the CLEC establish direct trunking to that third party carrier rather than using the already established trunking between SBC Indiana's tandem and such other carrier for transiting.

192. The transit service at issue here AT&T contends, is the tandem switching and common transport provided by SBC Indiana for the exchange of local and intraLATA toll traffic between AT&T and LECs other than SBC Indiana, such as other CLECs and independent companies ("ICOs"). SBC Indiana claims that is not required to carry transit traffic. Therefore, if AT&T does not implement direct trunking with certain carriers after a particular traffic threshold is met, SBC Indiana proposes to terminate the provision of tandem services between AT&T and that carrier. To the contrary, AT&T asserts, SBC Indiana has an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers.

4) FBN Issues/Position

193. FBN contends that SBC Indiana has not complied with Checklist Item 1 because SBC Indiana and FBN litigated a dispute regarding whether their interconnection agreement required SBC Indiana to make Fiber Meet Interconnection available at a point chosen by FBN. FBN states that the litigation of the issue in an arbitration was unreasonable because the agreement was clear and the same matter had already been decided in the AT&T arbitration

d) SBC Indiana Reply Position

Location of Point of Interconnection

194. SBC Indiana notes AT&T asserts that a problem with SBC Indiana's interconnection agreements is that they require a CLEC to establish a point of interconnection in the SBC Indiana *serving area* of the LATA. This assertion has no merit, SBC Indiana contends, because as AT&T itself notes, section 251(c)(2)(B) states that an ILEC is to provide interconnection "at any technically feasible point *within the carrier's network*." 47 U.S.C. § 251 (c)(2)(B). (Emphasis added.) Similarly, SBC Indiana points out, the relevant FCC rule, 47 C.F.R. § 51.305(a)(2), requires that the point of interconnection be established at "any technically feasible point *within* the incumbent LEC's network." (Emphasis added).

195. SBC Indiana's interconnection agreements, the Company maintains, implement this requirement. SBC Indiana further emphasizes that a point of interconnection located outside the ILEC's service territory is not "within" the ILEC's network, and thus, there is no basis for requiring SBC Indiana to establish a point of interconnection outside of its service territory.

Direct End Office Trunking

196. According to SBC Indiana, its network contains both “end” offices and “tandem” offices. Local switches, which connect end users to its network, are located in end offices. Tandem offices, on the other hand, contain tandem switches that route traffic between end offices, and are not directly connected to end users.

197. SBC Indiana sets out, as an example, the situation where a CLEC uses a SPOI in a LATA, and one of the CLEC’s end users calls an SBC Indiana end user within that LATA. In this situation, SBC Indiana explains, the CLEC’s network carries the call to the SPOI. From the SPOI, the call is generally routed, or “trunked,” to an SBC Indiana tandem office. SBC Indiana’s tandem switch will then route the call to the appropriate end office, where the local switch routes the call to the end user.

198. A tandem switch however, SBC Indiana notes, has a limited amount of capacity, i.e., it has only a limited number of “ports,” where trunks can be connected. If all calls within a LATA were routed to one SBC Indiana tandem office, and if the volume of those calls were to exceed the tandem office’s switching capacity, the tandem switches there would be “exhausted.” Therefore, when the level of traffic from a SPOI that leads to a specific end office reaches a certain level, in the Company’s opinion, sound engineering practice dictates that direct trunks be installed from the SPOI to the end office, in lieu of routing the traffic indirectly through the tandem switch. (SBC 1/8/03 Deere Rebuttal Aff. ¶¶ 21-39).

199. SBC Indiana observes that AT&T raises two issues with respect to SBC Indiana’s direct trunking policy. First, it claims that the threshold level established by SBC Indiana (that is, the level of traffic at which a carrier is required to establish direct trunking) is too low. Noting that the FCC has not set or required a specific threshold, SBC Indiana asserts its compliance with the general requirement that interconnection be “nondiscriminatory.” As such, SBC Indiana requires an interconnected carrier to establish direct trunking to an end office when the level of traffic to that end office reaches the capacity of one “DS1” facility (24 trunks or POTS lines). To be sure, AT&T alleges that the threshold should be at the much higher DS3 (28 DS1s or 672 trunks) level. However, SBC Indiana maintains, the existing DS1 threshold is unquestionably nondiscriminatory, given that SBC Indiana uses a more demanding threshold (17 trunks) for establishing direct trunks in its own network. (SBC 1/8/03 Deere Rebuttal Aff. ¶ 27). Further, AT&T’s interconnection agreement with SBC Indiana requires direct trunking at the appropriate volume. (*Id.* ¶ 32.)

200. SBC Indiana argues that AT&T asserts that it should not bear the cost of transporting its own traffic (even though it collects revenue from its end users for such traffic) from the SPOI (at the tandem office) to SBC Indiana’s end office. It is the Company’s position that AT&T, as the cost causer, should be responsible for the cost of this transport. This too, is nondiscriminatory by nature, as SBC Indiana bears the cost for using direct trunking in its own operations, and at a threshold level lower than that used for CLECs.

201. Further, AT&T's claim that it is entitled to free transport for direct trunking has nothing to do with the requirement that SBC Indiana offer a SPOI, contrary to AT&T's argument that the payment for direct end office trunking creates some kind of second, "virtual," interconnection point. A "single point of interconnection," SBC Indiana maintains, refers only to the *physical* point at which two networks are connected. The FCC specifically held that "our rules . . . [require] that incumbent LECs provide for a single *physical* point of interconnection per LATA." Pennsylvania 271 Order ¶ 100. (Emphasis in original).

202. The FCC also found that issues of cost-sharing with regard to the use of a SPOI are irrelevant to checklist compliance, because "[t]he issue of allocation of financial responsibility for interconnection facilities is an open issue" which the FCC will address in a pending rulemaking. Id.; See also New Jersey 271 Order, ¶ 155 (finding that Verizon satisfied checklist item 1 by allowing "a competing carrier to interconnect at a single *physical* point in a LATA," notwithstanding allegations that Verizon had improperly shifted costs to interconnecting CLECs); and, Georgia & Louisiana 271 Order, ¶ 208 (holding that "unresolved intercarrier compensation issues" do not implicate compliance with checklist item 1). Even if AT&T must compensate SBC Indiana for the costs incurred in establishing direct trunking, SBC Indiana argues, it can still obtain physical interconnection at a SPOI.

203. While it sees AT&T as continuing to muddle the concepts of direct trunking and a single point of interconnection, SBC Indiana points out that the FCC confirmed that direct trunking does not entail establishing a new or different point of interconnection because the physical point of interconnection does not change (and may still be chosen by AT&T). See, Verizon Virginia Arbitration, ¶ 91 ("[I]mplementing direct end office trunks does not entail changing the location of a tandem office point of interconnection."). All direct trunking means, SBC Indiana explains, is that calls destined for the SBC Indiana end office in question are routed or trunked directly through the POI to that end office instead of being switched at the tandem office. In other words, the physical point of interconnection does not change.

Transit Traffic

204. SBC Indiana contends that the same analysis defeats AT&T's allegation that SBC Indiana has not supported its requirement of direct trunking with a third party carrier when the level of traffic that SBC Indiana "transits" between AT&T and that third party carrier reaches the DS1 level.

205. Further, SBC Indiana sees AT&T to contend that SBC Indiana has an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers. No such obligation exists, SBC Indiana argues. In the recent Verizon Virginia Arbitration (¶ 117), it points out, the FCC held that "the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under [section 251(c)(2)], nor do we find clear Commission precedent or rules declaring such a duty." Given that there is no obligation to even *provide* transit service, SBC

Indiana notes, the FCC rejected AT&T's transiting arguments (the same arguments offered here), and approved Verizon's proposed requirement of direct trunking for transit traffic at the DS1 level – which is identical to the threshold being challenged in this instance. (Id. ¶ 115).

Access to the Main Distributing Frame ("MDF")

206. According to SBC Indiana, the CLECs have access to their physically collocated equipment 24 hours a day, seven days a week. Further, CLEC physical collocation space may be physically separated from SBC Indiana's equipment as contemplated by the FCC's collocation rules and orders. (SBC 1/8/03 Alexander Rebuttal Aff. ¶ 4.) The "MDF," SBC Indiana explains, is the facility within SBC Indiana's CO on which every customer line, trunk and circuit is terminated as it enters the CO. (Id.). According to the Company, the MDF is owned by SBC Indiana, is located in its space in the CO, and direct access to the MDF by anyone other than SBC Indiana and its approved vendors places the security of the entire network at risk. (Id. ¶ 9).

207. SBC Indiana observes AT&T to contend that their technicians should be permitted to access the MDF directly, on grounds that such access is required to perform necessary maintenance functions, to test their lines, to verify dial tone and perform other functions. SBC Indiana maintains that it has no obligation to provide collocating CLECs access to the MDF. The FCC, it notes, has made clear that "protection of their [ILECs'] equipment is crucial to the incumbents' own ability to offer service to their customers." Advanced Services Order, ¶ 48; See also Advanced Services Remand Order, ¶ 102. According to SBC Indiana, in the Texas 271 Order, the FCC found that SWBT's collocation tariff satisfied the checklist, even where that tariff expressly prohibited CLEC access to the MDF. (SBC 1/8/03 Alexander Rebuttal Aff. ¶ 8.)

208. Since access to the MDF is not required, SBC Indiana maintains that its third party vendor policy is a necessary, practical and reasonable way to give CLECs the ability to perform work such as testing and maintenance functions outside their collocation space. According to SBC Indiana, third-party vendors must be certified by the Company. In this way, SBC Indiana ensures that all technicians who work on its network facilities are properly trained and insured, and will not harm the facilities of SBC Indiana or other CLECs whose facilities terminate on the MDF. (Id. ¶ 10).

209. Contrary to AT&T's contentions, SBC Indiana asserts, the third-party vendor policy is not overly cumbersome and does not result in excessively long service outages. SBC Indiana's technicians will assist CLECs in troubleshooting service outages without the need for vendor involvement. Whenever a CLEC reports that one of its customers has no dial tone, an SBC Indiana technician will check for dial tone at the MDF, and, if requested, will assist the CLEC in resolving the trouble. If there is no dial tone at the MDF, SBC Indiana verifies or corrects any wiring and cabling problems for which it is responsible. (Id. ¶ 11). Even where the problem is in the CLEC's facilities, SBC Indiana notes that it can be resolved in many instances by simply by changing the cross connection at the MDF to another facility within the CLEC's Connecting Facility

Assignment, ("CFA"), a function that SBC Indiana technicians will perform upon request. (Id. ¶ 12).

210. SBC Indiana observes AT&T to complain specifically about the problems it encountered with the NorthPoint assets it acquired. As explained by Mr. Alexander, SBC Indiana is willing to work with AT&T to resolve these problems. (SBC 1/8/03 Alexander Rebuttal Aff. ¶ 15). In any event, SBC Indiana points out, existing alternatives, including use of CFA reports to validate CFA assignments, would allow AT&T to validate its CFAs without the need to have its technicians access the MDF. (Id.).

Interconnection Agreement Negotiations

211. SBC Indiana asserts that FBN's contentions misstate, and cannot be reconciled with the Commission's October 16, 2002 order in the FBN complaint proceeding (Cause No. 42001-INT-01-RD-01, 02 (consolidated)). In its Order (at 14-15), the Commission recognized at least three times that the language in sections 3.2.2 and 3.2.3 was in conflict with the language in section 3.8.1. The Commission harmonized the apparently conflicting contract provisions in a manner that permitted the interconnection sought by FBN. Accordingly, FBN's argument that the language in the interconnection agreement was "crystal clear" cannot be reconciled with the Commission's order in the complaint proceeding. Further, the Commission did not find that it had already decided the identical issue in the AT&T Arbitration.

212. More fundamentally, SBC Indiana notes that the FCC has repeatedly held that carrier-specific disputes about the proper construction of interconnection agreements have no place in a section 271 proceeding, but are to be resolved in state arbitration or complaint proceedings in the first instance. Here, SBC Indiana asserts that the Commission has already resolved the issues, and that it is in compliance with the Commission's order. (SBC 1/8/03 Deere Reply Aff. ¶ 46.)

e) Commission Analysis and Findings

Access to the MDF/CFAs

213. The record indicates that access to MDF is a matter of great concern to certain of the CLECs and they maintain that such access has only recently been curtailed. Most important to our decision, however, is that the FCC has not required BOCs to provide access to the MDF. Indeed, SBC Indiana points out that, in the Texas 271 Order, the FCC found SWBT's collocation tariff to satisfy the checklist even though said tariff expressly prohibited CLEC access to the MDF (SBC Indiana Reply Brief on Exceptions). As such, there is no compliance issue at stake.

General Opt In Restriction

214. As AT&T's discussion of "opt in" policies relates specifically to reciprocal compensation arrangements, those arguments will be addressed under Checklist Item 13.

POI

215. Section 251(c)(2)(B) states that an ILEC is to provide interconnection "at any technically feasible point *within the carrier's network*." 47 U.S.C. § 251 (c)(2)(B). (Emphasis added.) Similarly, the relevant FCC rule, 47 C.F.R. § 51.305(a)(2), requires that the point of interconnection be established at "any technically feasible point *within the incumbent LEC's network*." (Emphasis added). Accordingly, the Commission rejects AT&T's assertion that it should be allowed to interconnect at any technically feasible point even if it is outside SBC Indiana's service territory, for purposes of this Cause.

Direct End Office Trunking

216. The Commission finds that the existing DS1 threshold is both a reasonable means to prevent tandem exhaust and nondiscriminatory, given that SBC Indiana uses a more demanding threshold (17 trunks) for establishing direct trunks in its own network. Further, AT&T's interconnection agreement with SBC Indiana requires direct trunking at the appropriate volume.

Negotiation Process

217. FBN's singular negotiation experience is not enough to sustain a failure of good faith action on the part of SBC Indiana. The Company has taken steps to implement improvements at its end.

1) Overall Assessment

218. On the whole, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 1. The non-discrimination and "meaningful opportunity to compete" requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit, and the three months of commercial results that SBC filed with this commission will be discussed later.

2. CHECKLIST ITEM 2 – Unbundled Network Elements

a) Description

219. Section 271 (c)(2) (B) (ii) of the Act requires that a section 271 applicant provide:

Nondiscriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252(d)(1). 47 U.S.C. Sec. 271 (c)(2)(B)(ii).

b) Standards for Review

220. The FCC views Checklist Item 2 in terms of three main elements, i.e., OSS, UNEs and Pricing.

Access to Operations Support Systems

221. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers. The FCC has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements (UNEs) under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. The FCC, therefore, examines a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv). The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent sufficient and reliable data on commercial usage, the FCC will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.

222. Although the FCC does not require OSS testing, a persuasive test provides an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged.

223. To the extent the FCC reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities (particularly if they are isolated and slight), as dispositive of whether a BOC has satisfied its checklist obligations. Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

UNE Combinations

224. Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory." This same provision also requires incumbent LECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.

225. In the Michigan 271 Order, the FCC emphasized that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets. Using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market. Moreover, combining the incumbent's UNEs with their own facilities encourages facilities-based

competition and allows competing providers to provide a wide array of competitive choices.

226. Because the use of combinations of UNEs is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, the FCC examines section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.

Pricing of Network Elements

227. Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. Sec. 251(c)(3). Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.

228. Pursuant to this statutory mandate, the FCC has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements. The FCC also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.

229. The FCC has held that it will not conduct a de novo review of a state's pricing determinations and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."³² From a practical standpoint, in prior Section 271 proceedings, the FCC has compared UNE rates to the rates it had previously approved for an "anchor state" for consistency with the FCC's TELRIC and other requirements. For SBC, the anchor state is Texas for consistency with the FCC's TELRIC and other requirements.

230. The Supreme Court, on May 13, 2002, upheld the FCC's forward-looking pricing methodology for determining the costs of UNEs and "reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act." Accordingly, the Commission's pricing rules remain in effect.

(Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

³² Verizon Pennsylvania 271 Order, CC Docket No. 01-138, Para. 55, FCC 01-269 (rel. Sept. 19, 2001) (Memorandum Opinion and Order); See, also, SBC California 271 Order, WC Docket No. 02-306, Para. 17, FCC 02-330 (rel. Dec. 19, 2002) (Memorandum Opinion and Order).

Recent Developments

231. In United States Telecom Association v. FCC, 290 F3d 415 (D.C. Cir. 2002), ("USTA"), the Court reviewed two FCC orders: 1) the UNE Remand Order (referred to by the court as the "Local Competition Order") and 2) the Line Sharing Order.

The UNE Remand Order

232. In the UNE Remand Order the FCC made a second attempt to define the "necessary" and "impair" standards of 47 U.S.C. § 251(d)(2) and to identify the unbundled network elements that ILECs are required to provide. The FCC found that with certain exceptions applicable to local switching and OS/DA, its original list of seven (7) UNEs must be made available in every geographic market and customer class, without regard to the state of competitive impairment in any specific geographic or product market. USTA, 290 F3d at 422. The Court remanded for further proceedings, for two basic reasons.

233. First, the Court held that the FCC had not justified its general adoption of a national list of UNEs with "[u]nvarying scope." Id. at 422-26. In particular, it found that the FCC had failed to consider certain "market specific variations in competitive impairment." Id. at 422. Second, the Court held that the FCC had applied an overbroad standard in determining when impairment can be found to exist based on the "cost disparities" between leasing an element as a UNE and obtaining it from sources other than the incumbent LEC. Id. at 426-28. The Court concluded that the FCC's standard had improperly relied in part on cost differences that are "universal as between new entrants and incumbents in any industry." Id. at 427.

Line Sharing Order

234. In the Line Sharing Order, the FCC determined that the high frequency portion of the copper loop ("HFPL") is a network element that ILECs must provide on an unbundled basis to CLECs that wish to provide digital subscriber line ("DSL") service to their end users for high speed internet access. Id. at 421.

235. The Court found the FCC's analysis deficient because the FCC "completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite)". Id. at 428. The Court inferred from the FCC's brief that the FCC had focused solely on DSL providers because Section 251(d)(2)(B) of the Act defines UNEs in terms of services that a CLEC "seeks to offer" – and CLECs seek to offer DSL when they request line sharing. The Court rejected this position as "quite unreasonable" because the "unbundling is not an unqualified good." The Court found that the Commission must "apply some limiting standard, rationally related to the goals of the Act" and "cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network". The Court also observed that such "naked disregard of the competitive context" would allow the FCC to inflict costs on the economy under conditions "where it had no reason to think doing so would bring on

a significant enhancement of competition". Id. at 429. The Court thus vacated and remanded the Line Sharing Order and stated a future "order unbundling the high frequency portion of the loop should not be tainted by the sort of errors" that had been identified in the UNE Remand Order. Id. at 429. The Court then rejected the ILECs' claim that "a portion of the spectrum of the loop cannot qualify as a 'network element.'" Id. at 429.

236. On September 4, 2002, the Court denied Petitions for Rehearing and rehearing en banc, but granted WorldCom's motion for a partial stay of the mandate to give the FCC time to complete the on-going triennial review of its unbundling requirements. With respect to vacating the UNE Remand Order and the Line Sharing Order, the Court stated that "[t]he vacatur of the Commission's orders is hereby stayed until January 2, 2003". See USTA v. FCC, Order, Nos. 00-1012 and 00-1015 (D.C. Cir. Filed September 4, 2002).

237. The FCC then sought and received an extension of the stay through February 20, 2003, in order to "complete its actions on remand" and establish a "new regime." The FCC voted to issue new rules on February 20, 2003, and the Court's mandate issued on February 27, 2003. To date, the text of the FCC's Triennial Review Order has not yet been issued.

c) Evidence, Issues/Positions

1) SBC Indiana

238. In demonstration of compliance with Checklist Item 2, SBC Indiana presents the testimony of witnesses Deere, Alexander, Smith, Cottrell, Ehr, Brown, Muhs, and Kagan.

UNE Combinations

239. Section 251(c)(3) of the Act, SBC Indiana comments, requires ILECs to provide UNEs in a manner that allows CLECs to combine them. The FCC's implementing rules further require ILECs to (i) not separate UNEs that are already combined with one another, unless the CLEC so requests, and (ii) combine UNEs at a CLEC's request, in certain circumstances. 47 C.F.R. § 51.31(b)-(f); Verizon Comms. Inc. v. FCC, 122 S. Ct. 1646 (2002).

240. SBC Indiana meets all these requirements, it asserts, as confirmed by the fact that CLECs are actively obtaining and using combinations of UNEs to compete. (SBC 9/26/02 Alexander Aff. ¶ 50). Indeed, as of November 2002, SBC asserts that CLECs were using over 31,000 UNE Platforms (combinations of UNE loop, switching, and shared transport). (SBC 1/8/03 Heritage Reply Aff. ¶ 32).

CLEC Combinations

241. SBC Indiana asserts that it provides UNEs in a manner that allows CLECs to combine them by offering various collocation arrangements. (SBC 9/26/02

Alexander Aff. ¶ 60.) No party and no evidence, the Company claims, disputes that SBC Indiana provides UNEs in a manner that allows the CLEC to combine them.

Existing Combinations

242. SBC Indiana also provides existing combinations of UNEs; meaning that, it does not separate UNEs that are already combined, unless the CLEC so requests. (*Id.* ¶ 61.) The most commonly provided existing combination involves a “migration” of an end-user’s existing retail service to a combination of UNEs. Such a migration might occur if an SBC Indiana retail end-user switched to a CLEC for local service, and that CLEC elected to serve the customer through the UNE-P. SBC Indiana has an effective tariff that enables CLECs to request such UNE-P migrations. (*Id.*)

243. According to SBC Indiana, no CLEC disputes that SBC Indiana provides existing combinations. In fact, it contends, many CLECs have taken full advantage of those offerings and are obtaining UNE combinations in substantial commercial volumes.

New Combinations

244. SBC Indiana also provides new UNE combinations that are sufficient to meet (if not exceed) the requirements of federal law. SBC Indiana makes these available through its tariff and through interconnection agreements.

Pricing

245. SBC Indiana provides UNEs and interconnection to CLECs at rates that comply fully with all FCC and statutory requirements. Section 252(d)(1) requires that a “just and reasonable rate for network elements” is one that is “based on the cost . . . of providing the interconnection or network element.” To implement this requirement, the FCC determined that UNEs prices are to be based on the TELRIC of providing those elements. First Report and Order, ¶¶ 674-79; 47 C.F.R. § 51.501 *et seq.* SBC Indiana’s cost studies, and the rates ultimately approved by the Commission, adhere to these principles.

246. The assessment of checklist compliance, SBC Indiana asserts, does not include the same type of searching inquiry that the Commission performs in approving wholesale rates. The FCC does not conduct a ratemaking proceeding in the first instance, nor will it “conduct a *de novo* review of a state’s pricing determinations.” Georgia & Louisiana 271 Order, ¶ 23. Rather, the first (and often dispositive) step is to confirm that the state commission applied TELRIC in approving the UNE rates without violating any of the basic TELRIC principles. As such, SBC Indiana argues, “The FCC’s analysis is complete if it reveals that there are no basic TELRIC violations or clear errors on substantial factual matters.” *Id.* ¶ 24. If – and only if – the FCC finds a substantial error or departure from TELRIC, will it review the resulting rates to determine if they fall within a “zone of reasonableness” (based on comparisons with other states) notwithstanding the error in methodology. *Id.* ¶ 25.

247. This Commission, SBC Indiana asserts, has demonstrated a consistent commitment to investigating SBC Indiana's wholesale rates fully, and has required the Company to establish rates that do not exceed what strictly applied TELRIC principles would dictate.

248. SBC Indiana states that the Commission has conducted a generic cost docket and a subdocket to determine the UNE and collocation rates SBC Indiana is permitted to charge CLECs under arbitrated interconnection agreements and tariffs mandated by the Commission. All significant Indiana CLECs actively participated in these investigations, including AT&T, MCI/WorldCom, Sprint and Time Warner. (SBC 9/26/02 Makarewicz Aff. ¶¶ 8, 12.) The Office of Utility Consumer Counselor also played an active role. (Id.)

249. The first cost proceeding, Cause No. 40611, was commenced in 1996, and the Commission issued an order dated June 30, 1998. (SBC 9/26/02 Makarewicz Aff. ¶ 8.) SBC Indiana states that it filed revised cost studies conforming to the IURC's order on August 30, 1998. Id. The subdocket, Cause No. 40611-S1, was opened in January 2001 to consider issues that had not been finalized in Cause No. 40611. (Id. ¶ 13.) This supplemental investigation was divided into two phases. (Id.) The initial phase addressed unbundled local switching ("ULS"), the shared transport component of ULS, and recurring and non-recurring charges for all UNE combinations. (Id.) The parties filed testimony in that phase in October and November of 2001, and the Commission held three days of evidentiary hearings from December 18-20, 2001. (Id. ¶ 14.) The Commission issued its Final Order with respect to that phase on March 28, 2002, and SBC Indiana states that it filed compliance tariffs on April 29, 2002. (Id.)

250. The second phase of Cause No. 40611-S1 was to address all remaining price issues, including DS-3 unbundled loops, DSL loop conditioning, sub-loops, dark fiber, access to the CNAM and AIN databases, and the high-frequency portion of the loop ("HFPL"). (Id. ¶ 13.) SBC Indiana states that the parties filed cost studies, supporting workpapers, and direct testimony covering each of these issues in February and March 2002. (Id. ¶¶ 14-15.) The Commission held evidentiary hearings, covering seven days, during April, May and June 2002 (Id. ¶ 15). As of SBC Indiana's September 26, 2002 filing, the Commission's written order was forthcoming. Id. The Order was issued by the IURC on February 17, 2003.

251. SBC Indiana states that it computes prices in accordance with the Commission's determinations in Cause No. 40611 and the first phase of Cause No. 40611-S1. (SBC 9/26/02 Makarewicz Aff. ¶¶ 8, 14, 31; SBC 9/26/02 Alexander Aff. ¶¶ 124-130.) Thus, SBC Indiana states, all of these Commission-approved rates are available to CLECs throughout SBC Indiana's service areas. They can be incorporated in interconnection agreements, and they are also incorporated in Commission-ordered tariffs. (SBC 9/26/02 Alexander Aff. ¶¶ 122-130.)

Non Discriminatory Access to OSS

252. The term “operations support systems” or OSS refers generally to the “systems, databases, and personnel used by incumbent LECs to provide service to their customers.” Kansas & Oklahoma 271 Order, ¶ 104. The FCC requires a BOC to provide requesting carriers nondiscriminatory access to its OSS so they can “formulate and place orders for network elements or resale services, . . . install service for their customers, . . . maintain and repair network facilities, and . . . bill customers.” *Id.* For OSS functions “that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that permits competing carriers to perform these functions in ‘substantially the same time and manner’ as the BOC.” (*Id.*) Where there is “no retail analog,” the BOC must offer access “sufficient to allow an efficient competitor a meaningful opportunity to compete.” (*Id.*)

253. The FCC takes a two-step approach to analyzing OSS compliance. The first step is to determine whether the BOC has made its OSS available to requesting carriers i.e., whether the BOC “has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.” (*Id.* ¶ 105). The second step is to determine whether the OSS are operationally ready, as a practical matter; i.e., “whether the BOC’s OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.” (*Id.*) The “most probative evidence that OSS functions are operationally ready is actual commercial usage in the state for which the BOC seeks 271 authorization.” (*Id.*) In addition, the FCC may consider “the results of carrier-to-carrier testing, independent third-party testing, and internal testing.” (*Id.*)

254. The Commission follows the FCC’s two-step approach here. In this Section, the electronic and manual interfaces SBC Indiana offers for each OSS function are described. In Section C, the results of commercial performance and of the third-party test of OSS are addressed.

Pre-Ordering

255. Pre-ordering, SBC Indiana explains, “includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.” Kansas & Oklahoma 271 Order, ¶ 120. According to SBC Indiana, it offers CLECs two main electronic interfaces for pre-ordering. The first is EDI/CORBA, an industry standard gateway that can understand inquiries submitted in either of two languages (EDI or CORBA) promulgated by technical industry bodies. (SBC 9/26/02 Cottrell Aff. ¶ 75.) EDI/CORBA is an “application-to-application” interface: it allows a CLEC’s electronic systems and software applications to communicate with their counterparts at SBC Indiana. (*Id.*) CLEC can integrate the interface with its own electronic systems and with the ordering interface described below. (*Id.*)

256. SBC Indiana’s second pre-order gateway is Enhanced Verigate, which was introduced in March 2001, and is modeled on the Verigate (Verification Gateway)

interface used by Southwestern Bell. (SBC 9/26/02 Cottrell Aff. ¶ 79.) Enhanced Verigate is a Graphical User Interface ("GUI"). Instead of communicating with a CLEC's electronic systems the way an application-to-application interface would, Enhanced Verigate accepts commands from CLEC representatives working on computer screens, just as well-known pc programs do. (*Id.* ¶ 78.) It uses plain-English displays and is based on the same design that is used for Internet web browsers. (*Id.*) This interface is thus suited for carriers (typically, smaller or newer CLECs) that do not have or wish to develop their own electronic applications for pre-ordering. (*Id.*) At the same time, it gives CLECs access to the same information that is available through EDI/CORBA. (*Id.* ¶ 72.)

257. According to SBC Indiana, both interfaces respond in "real time" and allow requesting carriers access to the same information and functions available to SBC Indiana's retail representatives (*Id.* ¶¶ 72-74), and to the same functions identified by the FCC in prior orders under Section 271. A requesting carrier can thus verify the customer's address, look up the customer's service record and directory listings, find out what features and services are available to the customer, pick and reserve a telephone number, determine the need for a field dispatch to install service, obtain a due date for installation, and obtain information (such as the Network Channel Interface) for ordering unbundled access. *Id.* ¶ 70. Requesting carriers can also determine on-line whether the end user's loop will support DSL service (*i.e.*, obtain information on the loop's characteristics) *Id.* ¶ 70.

Integration

258. As part of its assessment, the FCC considers whether a BOC allows carriers to integrate pre-ordering information into the ordering process and into their own systems. Texas 271 Order, ¶ 152. "[A] BOC has enabled 'successful integration' if competing carriers may, or have been able to, automatically populate information supplied by the BOC's pre-ordering systems onto an order form . . . that will not be rejected by the BOC's OSS systems." *Id.* SBC Indiana's EDI/CORBA pre-order interface is designed to be integrated with the EDI order gateway to form a seamless pre-order/order system, and it can also be integrated with CLEC systems that use either one of the two industry standard formats, EDI and CORBA. (SBC 9/26/02 Cottrell Aff. ¶ 114.) Moreover, at WorldCom's request, SBC Indiana modified EDI/CORBA to provide address information in a "parsed" format (divided into individual data fields) that corresponds to the order form. (*Id.* ¶¶ 99-100.) SBC Indiana also has modified its pre-ordering and ordering systems and formats to synchronize fields common to both interfaces. (*Id.* ¶ 101.) SBC asserts that these features go above and beyond the systems the FCC found compliant in Texas. Texas 271 Order, ¶ 154.

Ordering

259. As with pre-ordering, SBC Indiana contends, it offers two alternative interfaces to submit local service requests. (SBC 9/26/02 Cottrell Aff. ¶ 112.) The first of these is an application-to-application interface based on EDI, which can be used either on a standalone basis or coupled with the EDI/CORBA pre-order interface. (*Id.* ¶ 114.)

In March 2001, SBC Indiana updated the EDI interface in accordance with LSOG 4, promulgated by the industry's Ordering and Billing Forum. (Id. ¶¶ 115.)

260. The second order interface is Enhanced Local Exchange (Enhanced LEX), a GUI that CLECs can access using a commercial Internet Web browser program. (Id. ¶¶ 120.) Some carriers submit orders manually (e.g. by facsimile) through the LSC. (Id. ¶ 112.)

Firm Order Confirmations

261. SBC Indiana reviews carriers' orders for completeness, proper content, and format. (SBC 9/26/02 Cottrell Aff. ¶¶ 128-130.) Once a valid, firm order is accepted for processing, SBC Indiana issues a Firm Order Confirmation ("FOC") to the requesting carrier. (Id. ¶¶ 144-146.)

Rejections

262. SBC Indiana explains that CLEC orders that are incomplete, inaccurate, or improperly formatted are returned to the requesting carrier electronically, along with a notice that identifies the reasons for rejection so that the carrier can correct and resubmit its request. (SBC 9/26/02 Cottrell Aff. ¶¶ 147-148.) The FCC has recognized that "we will not hold a BOC accountable for rejects that occur for reasons within a competing LEC's control" (Kansas & Oklahoma 271 Order, ¶ 143). SBC Indiana informs that it offers extensive training and assistance to help CLECs submit accurate requests and thus avoid rejection in the first place. Further, to help CLECs avoid errors due to their submission of an order with an invalid end user address, SBC Indiana changed its ordering systems such that carriers can submit most orders "without an address", using alternative means to identify the location at which SBC Indiana is to install service. (SBC 9/26/02 Cottrell Aff. ¶ 149.)

Jeopardy Notices

263. SBC Indiana issues electronic "jeopardy" notices to CLECs if a condition in scheduling might cause it to miss the due date for installation. (SBC 9/26/02 Cottrell Aff. ¶ 153.)

Completion Notices

264. SBC Indiana issues electronic notices of order completion ("service order completions" or "SOCs") to the requesting carrier once the physical work is complete and the order is registered as complete in its ordering and provisioning systems. (SBC 9/26/02 Cottrell Aff. ¶¶ 154-155.)

"Line Loss" Notices (LLNs)

265. The notices that SBC Indiana provides to the carrier that places an order for local service occur because that carrier has "won" a new customer or because it wants to provide some new service to an existing customer. One carrier's win may be

another carrier's loss. A CLEC's end user might leave its existing carrier for another CLEC (described as a "CLEC-to-CLEC migration") or for SBC Indiana (often called a "win-back"). If the losing carrier served the end user solely by using SBC Indiana's facilities (by resale or the UNE-P), SBC Indiana provides that carrier with a LLN, also called an "836," after the winning carrier's order has been processed. (SBC 9/26/02 Cottrell Aff. ¶ 156.) That notice informs the losing carrier of its loss.

266. In the latter half of 2001, SBC Indiana and its affiliates learned that they were not providing some notices (most of them related to activity in 2001) on a timely basis. They assembled a "cross-functional team" to investigate, address, and resolve LLN issues. This team undertook an "end to end" analysis of the entire ordering process (both the relevant electronic systems and manual procedures) in order to identify the source of the problem. (SBC 9/26/02 Cottrell Aff. ¶ 158.) SBC Indiana's investigation revealed that some employees had not properly followed methods and procedures in certain situations. SBC Indiana asserts that it took action on this discovery and: (1) immediately put in place to monitor and detect any future occurrence procedures; (2) identified and issued LLNs that had not previously been issued; and, (3) enhanced its electronic systems or procedures so as to resolve the matter permanently. In addition, having identified a situation in which LLNs were properly issued, but did not provide complete or accurate information, SBC Indiana corrected the situation. (SBC 1/8/03 Cottrell Reply Aff. ¶¶ 41-57).

267. Throughout this process, SBC Indiana states that it and its affiliates provided frequent, detailed updates to CLECs and state commissions regarding the issue's status and SBC Indiana's progress toward a full resolution. These updates included a two-day regional workshop on LLN issues hosted by SBC Indiana in March 2002, an Accessible Letter posted on the CLEC website to summarize the workshop presentation and a series of progress reports filed with the Michigan Public Service Commission. The results of commercial performance, and the third-party test of LLNs, are addressed at Section C below.

Flow-through

268. SBC Indiana informs that CLECs may access SBC Indiana's OSS electronically via interfaces that use standard formats. For SBC Indiana, flow-through refers to the translation of CLEC orders from the standardized format to the internal format used by SBC Indiana's downstream systems. (SBC 9/26/02 Cottrell Aff. ¶ 138-140.) For some order types, the interface is designed to translate the entire request electronically and send it downstream for processing; these orders are said to "flow through." (*Id.* ¶ 138.) For other order types, a complete electronic translation has not yet been developed. (*Id.* ¶ 139) In those cases, the carrier's request is sent to the LSC, where it is typed directly into the downstream systems. (*Id.* 138) This is the same method, the Company contends, that it uses to enter its own retail orders.

269. According to SBC Indiana, the FCC does not require a BOC to "flow through" 100 percent of CLEC orders. The FCC has stated that it does not "specifically require [a Section 271 applicant] to provide data on its achieved flow-through rate to

determine that [its] OSS are capable of offering high flow-through." Pennsylvania 271 Order, ¶ 48. Indeed, the FCC has recognized that flow-through rates "are not so much an end in themselves" because a BOC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems is more relevant and probative for analyzing [its] ability to provide access to its ordering functions than a simple flow-through analysis." New York 271 Order, ¶¶ 162, 163.

Provisioning

270. "Provisioning" SBC Indiana explains, refers to the process of completing a CLEC's order and providing the requested product or service. According to SBC Indiana, provisioning of many CLEC services is coordinated by the Local Operations Center ("LOC"), which has almost 450 employees, assigned to provisioning activities. (SBC 9/26/02 Brown Aff. ¶ 27.) SBC states that the FCC requires that "[a] BOC must provision competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers," and it also examines the timeliness and the quality of a BOC's provisioning efforts for other products and services that have no retail analog. New Jersey 271 Order, App. C, ¶ 37. Provisioning performance is addressed at Section C below.

Special Services

271. "Special services," SBC Indiana explains, are telecommunications circuits that require specific transmission parameters over and above those required for "plain old telephone service" or "POTS." They include, but are not limited to, high capacity UNEs and services (*i.e.*, DS1 and above). (SBC 9/26/02 Foster Aff. ¶ 7.) SBC Indiana has a dedicated group in its Network Organizations that is responsible for the installation, repair and maintenance of these high capacity telecommunications circuits. (*Id.* ¶ 6.) SBC Indiana uses the same procedures and systems for Special Services provided to CLECs as it uses for those provided to its own retail unit. *Id.* ¶ 6.)

Repair and Maintenance

272. SBC Indiana asserts that it provides CLECs with nondiscriminatory access to its repair and maintenance functions, which they may use to report trouble and request maintenance. As with the other OSS functions, SBC Indiana offers two alternative methods to electronically report trouble: (1) EBTA, an industry standard application-to-application method, and (2) an EBTA GUI. (SBC 9/26/02 Cottrell Aff. ¶¶ 185-186.) According to SBC Indiana, CLECs may also contact a technician at SBC Indiana's LOC (which is responsible for receiving maintenance trouble reports). (*Id.* ¶ 185.) The technician will then enter the trouble report into its electronic systems. (SBC 9/26/02 Brown Aff. ¶ 100.)

273. The EBTA GUI allows carriers to perform the same functions that SBC Indiana's retail operations perform. (SBC 9/26/02 Cottrell Aff. ¶¶ 186-187.) Requesting carriers can (1) issue trouble reports, (2) conduct a Mechanized Loop Test ("MLT"), (3)

determine the status of a previous trouble report, (4) view a list of open trouble reports, and (5) view a list of reports closed within the last 30 days. (*Id.* ¶ 187.) The alternative interface, i.e., EBTA, SBC Indiana informs, enables carriers to perform all but the last two functions. (*Id.* ¶ 187)

Billing

274. There are two principal functions involved in billing, SBC Indiana explains. The first relates to CLECs billing end users for telephone usage, and the information that SBC Indiana provides to assist in that billing. The second relates to SBC Indiana billing of CLECs for wholesale products and services.

275. When an end user makes a phone call, the switch that routes the call also records the information for billing, such as the time, type (local, intraLATA toll, interLATA long distance) and length of the call. The end user's local carrier accumulates this information, bills the end user for the services the carrier itself provides (local and local toll calls), and bills other carriers (i.e., long-distance carriers like AT&T) for access to the local network, as applicable. In some cases, the switch belongs to SBC Indiana, but a CLEC uses that switch to serve its own end users (as when the CLEC is reselling SBC Indiana service or leasing the UNE platform). In such situations, SBC Indiana passes the usage information to the CLEC so it can bill other carriers or its own end users. (*See* SBC 9/26/02 Kagan Aff. ¶ 20.)

276. The FCC requires a BOC to demonstrate “that it provides competing carriers with complete and accurate reports on the service usage of competing carriers’ customers in substantially the same time and manner that a BOC provides such information to itself.” *New Jersey 271 Order* at App. C, ¶ 39. SBC Indiana argues that it provides nondiscriminatory usage reports almost by definition, as it uses a single, integrated regional system to process usage data for retail, resale, and UNE-P end users. (SBC 9/26/02 Kagan Aff. ¶ 20.) According to SBC Indiana, that system provides Daily Usage Files (“DUFs”) to CLECs for use in billing their end users and other carriers. (*Id.* ¶ 20.) CLECs can choose to receive the file via magnetic tape or electronically over data lines in the industry-standard format. (*Id.* ¶ 21.)

277. SBC Indiana also issues monthly bills to carriers. The FCC requires a BOC to provide “wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.” *New Jersey 271 Order* at App. C, ¶ 39. On each billing date (there are at least ten monthly billing cycles) representatives review bills for completeness and format. (*Id.* ¶¶ 39-41.) Monthly, SBC Indiana tests a sample of items to ensure that the rates for each product or service have been properly applied. (*Id.*)

278. SBC Indiana explains that its electronic systems also subject retail and wholesale orders to edit checks at the billing stage, to help ensure bill accuracy. (SBC 9/26/02 Kagan Aff. ¶ 41.) The LSCs have devoted a special Billing Accuracy team to resolve errors identified in this editing process. One of the Billing Accuracy Team’s objectives is to ensure that orders are posted before the billing cut-off (thus preventing double-billing, the concern expressed in the *Michigan [PSC] 271 Order*, ¶¶ 200-203.

(SBC 9/26/02 Brown Aff. ¶¶ 49-50.) Team members review summaries of orders in this error status daily in an attempt to identify priorities and ensure timely resolution. (*Id.*)

Training Carrier Assistance and Help Desk Support

279. Having taken steps that it believes increased the quantity and quality of electronic methods to access OSS, SBC Indiana maintains that it has also given attention to the human side of OSS access, from the CLEC's initial start-up to its mature operation. It dedicates a separate Account Manager to each CLEC to serve as its principal contact and as a guide to the various services and options available. (SBC 9/26/02 Schenk Aff. ¶ 9.) A group of technical experts provides OSS demonstrations and assists CLECs in the initial development of interfaces. (SBC 9/26/02 Cottrell Aff. ¶¶ 34-38.) SBC Indiana contends that it offers a wide selection of training courses that cover a variety of business and technical subjects associated with OSS use. (*Id.* ¶ 231) These courses are supplemented by an interactive CLEC website (SBC 9/26/02 Schenk Aff. ¶¶ 25-27), along with specialized groups and call centers that offer technical assistance (SBC 9/26/02 Cottrell Aff. ¶¶ 33-38, 57-63). Region-wide service centers staffed by hundreds of trained specialists handle manual provisioning and maintenance activities for individual orders or trouble reports. The LSC handles ordering issues while the LOC tackles provisioning and maintenance. (SBC 9/26/02 Brown Aff. ¶ 6.) For all areas of OSS, SBC Indiana has instituted a CLEC User Forum that enables CLECs to meet regularly to exchange ideas and provide input to SBC Indiana.

Change Management Plan

280. "Change management" refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes to, the BOC's OSS. New York 271 Order, ¶ 103. Periodic changes to OSS, SBC Indiana explains, "may include operations updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities." *Id.* According to SBC Indiana, the FCC has identified the following elements of a change management plan ("CMP") that give an efficient competitor a meaningful opportunity to compete: (1) evidence of competing carrier input in the design and continued operation of the change management process; (2) memorialization of the change management process in a basic document; (3) a separate forum for change management disputes; and (4) a stable testing environment that mirrors production. (*Id.* ¶ 111).

281. SBC Indiana maintains that its CMP reflects competing carrier input, as it was developed in 13 months of negotiations with CLECs throughout the 13-State SBC/Ameritech service area, conducted pursuant to the FCC's merger conditions. (SBC 9/26/02 Cottrell Aff. ¶ 201.) It was submitted to the FCC without any disputed issues at the conclusion of the Uniform and Enhanced OSS collaborative. (*Id.*) It also was approved in Phase 1 of this Cause for use in the SBC Indiana OSS test to be

administered by KPMG Consulting.³³ The 13-state CMP has been memorialized in a comprehensive document that was filed in the FCC Uniform and Enhanced OSS collaborative, and is posted on the CLEC web site. (*Id.*) It contains detailed timelines and procedures for changes, including walk-through, comment, and testing phases for further CLEC input. (*Id.* ¶¶ 202-204.)

282. To the extent any issue is not resolved in this process, the CMP contains its own mechanism for dispute resolution: an Outstanding Issue Solution procedure that allows a CLEC or CLECs to call for a discussion and vote – by CLECs alone, as SBC Indiana does not have a vote – through which CLECs can vote to delay, modify or even block the release. (*Id.* ¶¶ 209-214.) This “go-no go” vote is substantially identical to the procedure the FCC endorsed in its *Texas 271 Order* ¶¶ 112, 116. As an added layer of protection, SBC Indiana notes, it has implemented “versioning” – a feature that allows requesting carriers to continue using an existing version of OSS software even after SBC Indiana issues a new version. (SBC 9/26/02 Cottrell Aff. ¶ 220.) The FCC has found “that versioning enhances [a BOC’s] change management plan by providing significant additional assurance that changes will not disrupt competing carriers’ use of [the BOC’s] OSS.” *Kansas & Oklahoma 271 Order*, ¶ 167.

283. SBC Indiana notes that testing environment is a set of programs that allows SBC Indiana and CLECs jointly “to test” proposed OSS changes before the changes are implemented for commercial use. (SBC 9/26/02 Cottrell Aff. ¶ 56.) The testing environment is designed to process orders and transactions, in the same way that the real-world OSS will, once the proposed change is implemented. (*Id.*)

Implementation of LSOG4

284. AT&T is also seen to contest the process by which SBC Indiana implemented LSOG4. AT&T states that the implementation was “haphazard” because it was done “without regard to change management.” (12/11/02 AT&T Willard/Webber Aff. ¶ 32). SBC Indiana disagrees. There was an identified CMP, and a timetable for the guide’s release in place, the one SBC Indiana and its affiliates spent months negotiating with the CLECs. Although that process had not been formally approved at the time, SBC Indiana claims that the CLECs had agreed to the process and its timetable, and SBC Indiana followed through. Consistent with the change management process, SBC Indiana: provided a Release Notification six months before implementation, followed by a 7-day comment period; issued Initial Requirements over five months before implementation, followed by a month-long comment period and a two-day walk-through; and issued Final Requirements, reflecting agreed changes from the previous Comments and walk-throughs, four months before implementation, followed by two more walk-throughs.

285. SBC Indiana asserts that to the extent AT&T had a problem with these procedures, it had the opportunity to request a “go- no go” vote (a procedure endorsed

³³ Cause No. 41657, Order, (March 19, 2001).

by the FCC in its Texas and Kansas & Oklahoma 271 Orders) to delay or block implementation. (See SBC 1/8/03 Cottrell Reply Aff. ¶ 22.) Neither AT&T nor any of the CLECs, SBC Indiana points out, sought to invoke this dispute resolution mechanism. (Id.)

Implementation of LSOG 5

286. In SBC Indiana's view, AT&T's complaints concerning the implementation of LSOG 5 are also irrelevant. The FCC has never required that any particular version of the LSOG standards be used, SBC Indiana states, and it has approved Section 271 applications in a dozen states where LSOG 2, 3, or 4 (but not 5) had been implemented.

287. SBC Indiana informs that it delayed the release date for LSOG 5 one month because it had discovered unanticipated problems during testing and wanted additional time to resolve them before it went into commercial use. (SBC 1/8/03 Cottrell Reply Aff. ¶ 24.) SBC believes this is the very purpose of the CMP – to work out the issues surrounding systems changes and minimize possible negative impacts. So too, the release of LSOG 5 was administered under the FCC-required Uniform and Enhanced Plan of Record. The FCC expressly approved SBC's request to delay the implementation of LSOG 5, finding that there was good cause. (Id.)

2) WorldCom Issues/Position.

288. WorldCom witness Lichtenberg explained that SBC Indiana's OSS systems are still flawed. In her testimony, she addressed line loss notices; SOC notices; flow through; line splitting; inaccurate provisioning. The problems identified, WorldCom argues, clearly indicate that SBC Indiana's OSS fails to meet the requirement that CLECs be allowed access to OSS on a nondiscriminatory basis. WorldCom states that the problems continue to exist and urges the Commission to decline to provide a positive Section 271 recommendation unless, and until, each of the problems is resolved in a satisfactory manner.

OSS Service Order Completion Notices ("SOCs")

289. The missing SOC's, WorldCom contends, is a smaller scale version of the "meltdown" that happened shortly after the FCC granted Verizon Section 271 authority in New York. There, several hundred thousand orders for local service (among several CLECs) did not receive SOC's.

290. The result of missing SOC's, WorldCom informs, is that orders become "mysteriously lost" in SBC Indiana's systems and are neither confirmed, nor completed. When SOC's are missing, residents who chose WorldCom local service are either awaiting local service from WorldCom, or have such service but continue to be billed by SBC Indiana. In addition, some customers may have WorldCom service, and SBC Indiana may have ceased billing these customers, but WorldCom is not yet billing them because of the failure to receive the SOC's.

291. According to WorldCom, SBC Indiana has claimed on several occasions to have “solved” this problem. While the situation has improved, SBC Indiana’s apparent inability to find the root cause, leaves WorldCom concerned that SBC Indiana has chosen to claim premature success on this issue.

292. WorldCom explains that when it receives an electronic acknowledgement, followed by an electronic Firm Order Confirmation (“FOC”) and an electronic SOC, there is no manual intervention — the entire process is automated, efficient and allows the processing of a significant number of orders per day. The electronic notifiers permit WorldCom to update systems in a near real-time manner with the current status of the orders. This, in turn, allows for the relaying of accurate information to customers, should they call to inquire about the status of their order. If, however, WorldCom does not receive these notifiers from SBC Indiana *seriatim*— acknowledgement, FOC, SOC — manual intervention is required. Such intervention is required where WorldCom receives an acknowledgement, but no FOC, within at least three days. In that scenario, WorldCom brings these records to SBC Indiana’s attention via the help desk/trouble ticket process. These trouble tickets remain open until an appropriate electronic response is received for each purchase order number.

293. Manual intervention, WorldCom contends, increases its operating costs and inhibits its ability to serve commercial volumes. The receipt of a timely SOC is equally important as it closes out the pending order and initiates service and billing upon the provisioning date. Once this occurs, the customer becomes “active” in WorldCom’s systems. The impact of SBC Indiana’s failure to send electronic SOC’s can be both lost revenue and customer dissatisfaction. It means that WorldCom’s customers are either being billed by SBC Indiana or are not being billed at all. In either case, the customer will ultimately receive a bill from WorldCom several months after the service. A single bill of that magnitude, however, is likely to cause significant customer complaints or refusals to pay, and perhaps, disconnections.

OSS – Flowthrough Failures

294. Many of the orders that WorldCom places do not flow through the SBC Indiana systems. This results in SBC Indiana relying on manual intervention, which has led to a deteriorating and inconsistent backlog of missing SOC notices. Yet, SBC Indiana asserts that a large percentage of the orders which have been submitted do flow through.

295. While SBC Indiana has made improvements since this problem peaked, WorldCom claims there are still detrimental impacts. One major cause is the existence of errors or mismatches in the SBC Indiana back end databases, such as the information in its SAG (“Street Address Guide”) not matching the address on the CSR (Customer Service Record). SBC Indiana’s failure to add the proper CLEC ownership information to orders during its manual processes also has led to difficulties.

OSS Provisioning Errors

296. WorldCom states that the receipt of a SOC is no guarantee that an order has been provisioned properly. This has resulted in the failure to add services such as call waiting, and in completing smooth migrations of customers from SBC Indiana to WorldCom. SBC Indiana's back-end systems often do not reflect the account and billing changes that should have resulted from a customer migration. At times, WorldCom claims, this has led to WorldCom's customers being disconnected (once five separate times) for "failure" to pay an SBC Indiana bill, even though the customer is not an SBC Indiana customer.

OSS Line Loss Notification (LLNs)

297. Where WorldCom is providing local service via UNE-P in Indiana, SBC Indiana is supposed to send a LLN to WorldCom in the event that a customer has migrated to another CLEC (a CLEC-to-CLEC Migration) or to SBC Indiana (a winback). The LLN lets WorldCom know that the customer is no longer with MCI, and that MCI should stop billing the customer for local service. When a LLN is not sent, WorldCom will likely keep on billing the customer. Without a LLN, a final WorldCom end user bill may still be rendered, but only after the former customer has called to complain that the local service is now being provided by a different carrier and that he/she is receiving local phone bills from two different carriers. Without a LLN, however, the exact date of the switch likely will not be known by the customer, so the billing to the customer is not likely to match the actual date he/she terminated service with the previous carrier. WorldCom contends that line loss is a continuing problem.

3) AT&T Issues/Position

Nondiscriminatory Access to OSS

298. AT&T relies on the evidence it produced showing the problems with: (1) SBC Indiana's OSS "releases" and Change Management Processes (CMP) in providing a stable OSS platform; (2) SBC Indiana's failure in issuing timely and accurate Line Loss Notifiers; and (3) the "Working Service in Conflict" process.

Change Management

299. AT&T argues that the SBC/Ameritech OSS prior to the March 2001 implementation of Local Service Ordering Guide version 4 ("LSOG 4"), and contends that until those enhancements were implemented, the OSS provided virtually the same functionality that was in place in August of 1997 when the FCC rejected [Ameritech's] 271 application for Michigan. AT&T complains specifically about the Ameritech "Issue 7" OSS interface release, a pre-merger Ameritech legacy system, and the delay in implementing certain features that other ILECs had implemented in either LSOG 2 or LSOG 3.

Line Loss Notifiers

300. AT&T contends that it has, at times, failed to receive Line Loss Notifiers (also known as 836 records) from SBC Indiana. AT&T witnesses DeYoung and Willard described the problems AT&T has encountered. These notifiers are critical, AT&T asserts, in that a UNE-P provider must rely upon SBC Indiana's line loss reports to alert it when a customer has switched carriers. The failure of SBC Indiana to provide timely and accurate line loss notifiers results in former customers being double billed. The former customer receives a bill from its new provider, as well from its former provider. SBC Indiana's failure to provide line loss notifiers has serious negative effects on the reputations of competitive providers. Even worse, a CLEC can be accused of slamming or cramming if it does not receive a notifier in a timely manner.

301. AT&T is concerned about the manual intervention that SBC Indiana's current systems rely upon for generating line loss notifiers. Any time that human intervention is relied upon to generate an OSS response, AT&T contends, errors will necessarily increase. As CLEC UNE-P volumes increased in Michigan, AT&T argues, so too did the errors of service representatives relied upon to generate line loss notifiers.

302. Despite what SBC Indiana would argue, AT&T maintains that there is insufficient experience to conclude that SBC Indiana has identified and fixed all of the problems associated with Line Loss Notifiers. According to AT&T, the only way the Commission will be able to determine if the problem of Line Loss Notifiers has been fixed will be to examine SBC Indiana's performance over a relevant time period to see if during that time period there are an impermissible number of errors and mistakes. In other words, the Commission should let SBC Indiana's systems prove themselves out over time. Only in this fashion will the Commission be able to determine if SBC Indiana's systems have stabilized. Given the "off-again, on-again" history of this issue, AT&T recommends that SBC Indiana be required to show compliance with measurement criteria for at least 6 consecutive months before this issue can be considered resolved.

4) Time Warner Comments

303. Time Warner has two concerns regarding the FCC's local use standard for converting existing special access circuits to EELs. First, Time Warner believes that it should be able to obtain *new* access circuits at UNE rates without the application of the certification standards for local usage. In other words, Time Warner contends that the FCC's local usage criteria should not be applied to new combinations of UNE loops with UNE dedicated transport.

304. Time Warner also "suggests that the IURC clarify that on-going certification [that EELs remain eligible under the local use test] is not necessary." Time Warner 12/11/02 Sherwood Aff. ¶ 32.

5) SBC Indiana Reply

UNE Combinations

305. SBC Indiana opposes AT&T's request that the Commission force SBC Indiana to accede to a "continuing" obligation to provide those UNEs indefinitely outside of federal law. According to SBC Indiana, there is no legal basis for such a course and no need for it either, because SBC Indiana already provides the pre-USTA UNEs; when the FCC issues new unbundling rules, and when the new rules take effect, SBC Indiana asserts that it will, of course, abide by *them* absent a stay, waiver, or modification.

Applicability of FCC's "Local Use" Rules.

306. SBC Indiana states that in the Supplemental Order (§ 2), the FCC mandated that "interexchange carriers (IXCs) may *not* convert special access services to combinations of unbundled loops and transport network elements" (that is, EELs) unless the "IXC uses combinations of unbundled network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." (Emphasis added.) The FCC then established specific criteria for the CLEC to certify compliance with the "local use" standard in its Supplemental Order Clarification (§ 22). The purpose of the FCC's standard is to prevent carriers from using the unbundling rules to sidestep the tariffed access charges that apply to special access circuits. Supplemental Order Clarification, § 7 ("Permitting the use of combinations of unbundled network elements in lieu of special access services could cause substantial market dislocations and would threaten an important source of funding for universal service . . . [for example] by inducing IXCs to abandon switched access for unbundled network element-based special access on an enormous scale.").

307. SBC Indiana disagrees with Time Warner's proposed exceptions to the local use rules, because that would defeat the purpose of the FCC's local use rules, and allow carriers to do what the FCC sought to prevent – use EELs to avoid tariffed access charges. In SBC Indiana's view, it makes no sense to say that carriers may not use EELs as a substitute for *existing* special access circuits, but then allow them to use EELs to avoid access charges on *new* circuits.

308. SBC Indiana also notes that Time Warner does not say why it believes on-going certification is "not necessary," nor does Time Warner suggest that on-going certification is inconsistent with the FCC's rules. According to SBC Indiana, it is consistent with the FCC's rules, which require a CLEC to certify that it will use the EEL to provide a significant amount of local service upon the conversion of special access circuits to EELs. Supplemental Order Clarification, § 22. The on-going certification requirement merely requires CLECs to show their continued compliance with the FCC's "local use" rules. In fact, the FCC's Supplemental Order Clarification gives incumbents the right to audit a CLEC's ongoing use of EELs to ensure ongoing compliance with the local use rules. Id. § 29; SBC 1/8/03 Alexander Reply Aff. § 22.

309. More fundamentally, SBC Indiana contends, the Commission need not resolve either dispute here. For starters, although SBC Indiana maintains the law clearly supports its position, the issue at best presents the type of “novel interpretive dispute” that SBC claims the FCC refuses to entertain in a section 271 proceeding, which involves compliance with existing, black-letter rules. Texas 271 Order, ¶ 23. Moreover, according to SBC Indiana, Time Warner’s complaints do not bear on local competition. To the extent a carrier really uses an EEL for its intended purpose (to provide at least a significant amount of local exchange service), it should have no problem certifying as much and no problem obtaining or keeping the EEL. To the extent a carrier intends to use an EEL essentially as a substitute for long-distance special access service, it is unclear how any difficulty presented by the “local use” standard would have an effect on the local market. The FCC’ has stated, the local use standard “does not affect the ability of competitive LECs to use combinations of loops and transport (referred to as the enhanced extended link) to provide local exchange service.” Supplemental Order, ¶ 5.

DS3 Combinations

310. With respect to Time Warner’s complaint about SBC Indiana’s refusal to include New EELs for DS3 Loop/Transport combinations, SBC Indiana states that it does not refuse to *provide* new EELS, and this issue is not about whether SBC Indiana must provide existing or new EELs combinations that include high-capacity loops (DS-3 and above). According to SBC Indiana, the only issue is whether every possible new combination that would include such high-capacity loops must be specifically listed in SBC Indiana’s tariff. Currently, that tariff – which reflects the Commission’s order in the AT&T arbitration – requires a CLEC to submit a BFR for combinations involving loops with capacity above DS-3 (a DS-3 is the equivalent of 672 voice-grade circuits). (SBC 1/8/03 Alexander Reply Aff. ¶ 25.) SBC Indiana states that it would not be reasonable or practicable for SBC Indiana to anticipate and list in its tariff every possible combination of UNEs and develop and provide standard ordering, provisioning, and billing methods and procedures to govern each. (*Id.*) SBC Indiana claims that there is no evidence of any material commercial demand for UNE combinations that include high capacity loops, dark fiber loops, or dark fiber transport. Accordingly, SBC Indiana contends, the BFR process contained in the parties’ interconnection agreement provides a reasonable method for obtaining them. See Id.

Possible Future Rates

311. Much of the argument on pricing, SBC Indiana notes, has nothing to do with the current IURC-approved rates. The complaints center on the possibility that SBC Indiana might someday propose higher rates. SBC Indiana sees WorldCom to propose that SBC Indiana’s existing UNE rates be capped for five years. The FCC, SBC Indiana contends, has held that the rates to be reviewed for assessing compliance are those in effect, and it rejects the theory that post-approval rate changes are a barrier to section 271 approval. In the Georgia 271 proceedings, CLECs opposed BellSouth’s application on the ground that BellSouth had opened a new cost docket to establish new UNE rates. The FCC, however, held that “we do not believe that the existence of a new

Georgia cost docket, without more, should affect our review of the currently effective rates submitted with BellSouth's Section 271 application." As the FCC went on to explain:

States review their rates periodically to reflect changes in costs and technology. As a legal matter, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself. Such a requirement would likely limit the ability of incumbent LECs to file their section 271 applications to specific windows of opportunity immediately after state commissions have approved new rates to ensure approval before the costs of inputs have changed. Georgia & Louisiana 271 Order, ¶ 96 (internal citations omitted).

312. Similarly, in its Massachusetts 271 Order, the FCC wrote that "the fact that a state may conduct a rate investigation and change the rates in the future does not cause an applicant to fail the checklist item at this time. Indeed, rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions." (*Id.* ¶ 36.) As such, SBC Indiana contends, the possibility of future rate changes bears no relevance on checklist compliance. To the extent WorldCom contends the Commission should impose such restrictions under the "public interest" inquiry, SBC Indiana argues, its proposal falls outside public interest concerns.

313. SBC Indiana further states that in the Maine 271 proceedings, AT&T and WorldCom argued that Verizon's prices did not comply with the checklist because Verizon would likely propose a new rate for daily usage files ("DUFs") in the near future. The FCC first found that the potential uncertainty associated with a future proposal was irrelevant, given that any actual proposal would not be imposed unilaterally by the BOC but would instead be subject to the review of a state commission that had demonstrated its commitment to TELRIC principles (a commitment that this Commission indisputably shares):

We do not credit AT&T's contention that there is "nothing to stop Verizon from proposing another DUF rate at any time in the future." If Verizon adopts a DUF rate in the future, that rate will be submitted to the Maine Commission for consideration and approval, which, as we have stated, has demonstrated a commitment to TELRIC principles. Thus, Verizon may not unilaterally propose another DUF rate and charge competing LECs accordingly, as AT&T suggests. Maine 271 Order, ¶ 23 (footnotes omitted).

314. The FCC further refused to consider WorldCom's prediction that the new proposal would be too high, finding such allegations to be premature and holding that it would be improper to make a finding of non-compliance based on rates that were not even in existence:

We also conclude that WorldCom's concern regarding Verizon's anticipated DUF rate is premature. WorldCom presumes that Verizon will file a tariff containing a DUF rate that is excessive and non-TELRIC based, as WorldCom claims Verizon has done in other states, such as Rhode Island, Massachusetts, and Vermont. WorldCom claims that Verizon's DUF rates in other New England states contain TELRIC errors and presumes that the future Maine rate will have similar errors. Obviously, however, we are unable to assess a rate that does not exist during the period that we review the section 271 application, much less make a finding of checklist noncompliance based on such a rate. Moreover, as we stated above, to the extent Verizon proposes a DUF rate that is excessive and non-TELRIC based, WorldCom will have an opportunity to challenge that rate at the state level. Id. ¶ 24.

Interim Rates

315. According to SBC Indiana, the FCC has made clear that Section 271 does not require that permanent rates be in effect for each and every UNE at the time of a Section 271 application. To the contrary, interim rates may be acceptable in the situation where: 1) the interim solution to a particular rate dispute is reasonable under the circumstances; 2) the state commission has demonstrated its commitment to our pricing rules; and 3) provision is made for refunds or true-ups once permanent rates are set. Arkansas & Missouri 271 Order, ¶ 64; see also Kansas & Oklahoma 271 Order, ¶ 238. If it were otherwise, SBC Indiana Comments, Section 271 applications would be unnecessarily held hostage:

[T]he section 271 process could not function as Congress intended if we adopted a general policy of denying any 271 application accompanied by unresolved pricing and other intercarrier disputes. Our experience has demonstrated that, at any given point in time at which a section 271 application might be filed, the rapidly evolving telecommunications market will have produced a variety of unresolved, fact-specific disputes concerning the BOC's obligations under sections 251 and 252. . . . If uncertainty about the proper outcome of such disputes were sufficient to undermine a section 271 application, such applications could rarely be granted. Congress did not intend such an outcome. Texas 271 Order, para 87.

Non-Discriminatory Access to OSS

316. SBC Indiana and its affiliates, the Company argues, have made extensive efforts to enhance operations support systems ("OSS") and to address CLEC concerns in this area. While most of the intervenors comment on OSS, SBC Indiana asserts that they barely try to dispute SBC Indiana's evidentiary showing, which, according to SBC Indiana, demonstrates that it offers sufficient interfaces to provide CLECs access to the

same OSS functions SBC Indiana provides for its own use. See Kansas & Oklahoma 271 Order, ¶ 105. SBC Indiana argues that the CLEC Comments address only half of the FCC's analysis, that of performance i.e., whether the OSS are operationally ready, as a practical matter, based on results of "actual commercial usage" and "the results of carrier-to-carrier testing, independent third-party testing, and internal testing." Kansas & Oklahoma 271 Order, ¶ 105. SBC Indiana also maintains that it meets the other half of the FCC's standards and that it does provide the required OSS interfaces.

317. SBC Indiana argues that AT&T's complaint about the inadequacy of the Ameritech OSS prior to the March 2001 implementation of Local Service Ordering Guide version 4 ("LSOG 4") is both irrelevant (because the purpose of this proceeding is to address OSS as they exist now, not as they existed years ago), and incorrect, according to SBC Indiana.

318. SBC Indiana asserts that it implemented enhancements before March 2001, including (1) a series of new pre-order functions like DSL loop qualification (implemented April 2000); (2) additional ordering methods (such as direct ordering via the TCP/IP Internet protocol); (3) improvements to streamline the ordering process (such as a feature that allows CLECs to order a loop with long-term number portability in a single order, implemented June 1999); and (4) electronic ordering of new products, such as the UNE Platform (implemented October 1999). In SBC Indiana's view, AT&T's real complaint is one of formality; namely that, the Company did not specifically number its releases using the industry nomenclature "LSOG 2" or "LSOG 3" and so forth. In terms of substance, however, SBC Indiana asserts that it did not lag behind industry standards. Many of the pre-2001 enhancements were implemented *before* the related industry standard took effect, SBC Indiana explains, and that is why they were not tied by number to a specific LSOG version.

319. AT&T's complaints about the implementation of LSOG 4 in 2001 are also obsolete, SBC Indiana argues. It implemented LSOG 4 over a year ago. At the time of the implementation, neither AT&T nor any other CLEC invoked its right to seek dispute resolution under the agreed change management plan that governs OSS updates. (SBC 1/8/03 Cottrell Reply Aff. ¶ 22.)

Ordering: Notices (LLNs)

320. SBC Indiana states that it and its affiliates have devoted extensive resources to resolving line loss issues, and performance has improved. SBC Indiana further states that it and its affiliates have kept CLECs apprised of the status of these efforts.

321. SBC Indiana claims that, although there have been problems with LLNs in the past, these did not affect *all* LLNs, and did not affect the other steps in the ordering and provisioning process (the provision of service to the end user, and the issuance of notices to the "winning" carrier). Whereas the parties either take no position on, or actively dispute, SBC Indiana's testimony that the issue has been fully resolved, SBC Indiana sees no one to dispute that the problem has been reduced.

Change Management Plan

322. SBC Indiana addresses AT&T's complaints about change management, noting that they did not concern the Change Management Process itself but BearingPoint's procedures for testing compliance. SBC Indiana notes that CLECs had significant input into the agreed test plan, and states that AT&T's attempts to criticize the test now are unfounded and untimely. (SBC 1/8/03 Cottrell Reply Aff. ¶¶ 3-7.)

d) Commission Analysis and Conclusion

323. Operations Support Systems. The CLEC comments do not address the threshold question of SBC Indiana's offering, but rather address performance. The Commission analyzes such Comments in the context of the overall results of commercial performance and the OSS test in Section C below. Given the many problems that many parties and entities have raised (including the U.S. Dept. of Justice) regarding billing and proper identification of customers, the IURC believes that some CLECs may still be experiencing problems in receiving timely, accurate, and complete notifiers of various kinds (including, but not necessarily limited to, line loss notifiers and post-to-bill notifiers). We refer this issue to the FCC for analysis and for possible imposition of required corrective actions on SBC and enforcement of those corrective actions (if any).

324. Pricing. The Commission's Final Order in Phase II of Cause No. 40611-SI addresses the CLEC and OUCC concerns that SBC Indiana's proposed application would be "premature" given the interim status of some UNE rates. SBC Indiana has filed compliance tariffs to implement the Commission's Order and to the extent those tariffs do not comply with the Order in some respect, those contentions will be addressed in Cause No. 40611-SI.

325. No federal authority is cited for the rate cap proposal, which arises for the first time under Checklist Item 2 and is repeated again as a public interest concern. We address the proposal under Section V.E of this Final Report and Recommendation.

326. Combinations. The IURC finds that Time Warner's challenge to the "local use" test, and its arguments regarding the tariff for DS3 combinations, are not supported by any FCC order and do not affect checklist compliance.

1) Overall Assessment

327. On the whole, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 2. The non-discrimination and "meaningful opportunity to compete" requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

3. CHECKLIST ITEM 3 – Access to Poles, etc.

a) Description of Checklist Item

328. Section 271 (c)(2)(B)(iii) of the Act requires that a 271 Applicant provide:

“[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.” 47 U.S.C. Sec. 271 (c)(2)(B)(iii).

b) Standards for Review

329. The key elements of Section 224 are directed to access and rates.

Access

330. Section 224(f)(1) states that “[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” 47 U.S.C. § 224(f)(1). The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers, as well as cable operators (for whose benefit Section 224 was originally enacted), have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. Second Louisiana 271 Order, n.574.

331. Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, “where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.” 47 U.S.C. § 224(f)(2). The FCC concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. First Report and Order, ¶¶ 1175-77.

Rates

332. Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for “pole attachments.” Section 224(a)(4) defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.” 47 U.S.C. § 224(a)(4).

333. Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are “just and reasonable.” 47 U.S.C. § 224(b)(1). Notwithstanding this general grant of authority, section 224(c)(1) states that “[n]othing in [section 224] shall be construed to apply to, or

to give the [FCC] jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State." *Id.* § 224(c)(1). The 1996 Act extended the FCC's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. *First Report and Order*, ¶ 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction.

(Section Adapted from *New Jersey 271 Order*, Appendix C with most cites and footnotes omitted.)

c) Evidence, Issues/Positions

1) SBC Indiana Position

334. SBC Indiana asserts that the requirements of Checklist Item 3 help competing carriers to deploy their own facilities (*e.g.*, a cable or other pole attachment) by using the incumbent LEC's poles, ducts, conduits, and rights-of-way (collectively "structure"). SBC Indiana maintains that it has a long history of providing access to its poles, ducts and rights-of-way, and has been providing such access at least since the adoption of the Pole Attachment Act (47 U.S.C. § 224) in 1978. (SBC 9/26/02 Stanek Aff. ¶ 5.)

335. According to SBC Indiana, no party disputes that it meets the requirements of checklist item 3. As such, CLECs can access SBC Indiana's poles, ducts, conduits, and rights-of-way pursuant to an interconnection agreement article ("Article XVI"), which has recently been incorporated into several interconnection agreements approved by the Commission, including that with AT&T. *Id.* ¶¶ 4, 8. SBC Indiana asserts that Article XVI fully complies with applicable federal and state regulations. *Id.*

336. SBC Indiana affords nondiscriminatory treatment to all CLECs requesting to attach to SBC Indiana structures. This concept of nondiscrimination is present throughout the structure access process. For example, SBC Indiana gives CLECs access to the same structure maps and records that it uses to design its own construction projects (*Id.* ¶ 11), evaluates CLEC requests for access to structure by using the same standards that apply to its own use of those facilities (*Id.* ¶ 13), and assigns pole attachment or conduit occupancy space on a nondiscriminatory basis (*Id.* ¶ 14). SBC Indiana's compliance showing is set out in the testimony of witness Stanek.

d) Commission Review and Conclusion

337. No party disputes SBC Indiana's satisfaction of the statutory access requirements at issue. Further, the Company satisfies the rates standard. To be specific, SBC Indiana has demonstrated that it is providing nondiscriminatory access to its poles, ducts, conduits and right-of-way at just and reasonable rates, terms, and conditions in accordance with Section 224 of the Act. As such, we find that SBC

Indiana has a concrete legal obligation to provide this checklist item on rates, terms and conditions that comply with the checklist.

1) Overall Assessment

338. On the whole, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 3. The non-discrimination and “meaningful opportunity to compete” requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

4. CHECKLIST ITEM 4 – Unbundled Local Loops

a) Description of Checklist Item

339. Section 271(c)(2)(B)(iv) of the Act, requires that a 271 Applicant provide:

“[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.” 47 U.S.C. Section 271 (c)(2)(B)(iv).

b) Standards for Review

340. The FCC defines “the loop” as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. More simply put, it is the transmission path that extends from an end user’s premises up to the incumbent LEC’s central office. In its definition, the FCC includes the different types of loops such as, two-wire and four-wire analog voice-grade loops, and the two-wire and four-wire loops that are conditioned in order to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.

341. To establish compliance with Checklist Item 4, the FCC states that a BOC must demonstrate that it has “a concrete and specific legal obligation” to furnish loops, and further, that it offers unbundled local loops in the quantities that competitors demand and at an acceptable level of quality. So, too, a BOC must provide “nondiscriminatory” access to unbundled loops. More specifically, it must provide access to any functionality of the loop that is requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.

342. In order to provide the requested loop functionality (such as the ability to deliver xDSL services), the BOC may be required to take affirmative steps to condition existing loop facilities so as will enable competing carriers to provide services not currently provided over the facilities. The BOC also must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier

(DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

343. The Line Sharing Order, released on December 9, 1999, introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL). "HFPL" is defined as "the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions." This definition applies whether a BOC's voice customers are served by copper or by digital loop carrier equipment. Competing carriers should have access to the HFPL at either a central office or at a remote terminal. The HFPL network element, however, is *only* available on a copper loop facility.

344. Checklist Item 4 also requires a BOC to make "line splitting" available to competing carriers so that competing carriers may provide voice and data service over a single loop. In addition, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer.

345. To make its showing, a BOC must demonstrate that:

- (a) it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements; and
- (b) it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.

(Section Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

c) Evidence, Issues/Positions

1) SBC Indiana Position

346. SBC Indiana witnesses Deere, Muhs, Brown, Chapman, Cottrell, and Habeeb have testified on some facet of this Checklist Item 4.

Availability

347. Pursuant to its interconnection agreements, SBC Indiana maintains, it has a binding legal obligation to make available all required kinds of loops, including 2-wire and 4-wire analog loops, 2-wire and 4-wire ISDN digital-grade loops, and various 2-wire

and 4-wire loops capable of supporting xDSL services. (SBC 9/26/02 Deere Aff. ¶¶ 91-92). SBC Indiana claims that there is no dispute on this matter.

The NID

348. A “Network Interface Device” SBC Indiana explains, is the device set at an end user’s premises, where the local loop ends. SBC Indiana contends that it provides CLECs the ability to obtain and use the Network Interface Device (“NID”) under terms and conditions established in interconnection agreements. (SBC 9/26/02 Deere Aff. ¶¶ 76-82). SBC Indiana contends that it also provides and connects the NID at no additional charge when CLECs order an unbundled loop. (*Id.* ¶ 79.)

Subloop Unbundling

349. There is also no dispute, SBC Indiana contends, but that CLECs can order sub-elements of the loop from SBC Indiana on an unbundled basis and access these sub-elements at technically feasible points. (SBC 9/26/02 Deere Aff. ¶¶ 95-98). Also, SBC Indiana asserts, available sub-elements include all those required by the FCC. (*Id.* ¶¶ 97-98). See UNE Remand Order, ¶¶ 206-229.

Coordinated and Frame Due Time Conversions (“Hot Cuts”)

350. SBC Indiana defines “hot cut” as the process of transferring an “active” loop (one that is currently being used to serve an end user) from SBC Indiana to a requesting CLEC. See New Jersey 271 Order, ¶ 142 n.419. This process involves a coordinated effort taken to move the loop from SBC Indiana’s switch onto the CLEC’s switch. (SBC 9/26/02 Brown Aff. ¶¶ 70-71.)

351. SBC Indiana notes that to satisfy Checklist Item 4, a BOC “must demonstrate that it provides unbundled loops through hot cuts ‘in a manner that offers an efficient competitor a meaningful opportunity to compete,’” and must offer hot cuts “in a timely manner, at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation.” Kansas & Oklahoma 271 Order, ¶¶ 199, 201. According to SBC Indiana, it offers a “Coordinated Hot Cut” (“CHC”) that meets with these requirements. It was developed after extensive negotiation with CLECs through collaborative workshops. (SBC 9/26/02 Brown Aff. ¶ 70.)

Facilities Modification

352. Sometimes, SBC Indiana notes, it finds that the facilities needed to provision an order are not readily available. The Facility Modification process (“FMOD”) it employs, however, provides CLECs with ongoing notice as to the status of orders that require additional time or cost, due to the need to modify facilities. (SBC 9/26/02 Brown Aff. ¶ 56.) This process includes a series of intermediate notices provided after the initial order confirmation and was collaboratively designed by the CLEC community and SBC Indiana to ensure the nondiscriminatory treatment of wholesale and retail customers. (*Id.*; SBC 9/26/02 Deere Aff. ¶¶ 137-152.)

Nondiscriminatory Access to xDSL-Capable Loops Used for Advanced Services

Pre-Ordering Loop Make-Up Information

353. “Loop qualification,” SBC Indiana explains, refers to the process of obtaining information about a loop’s characteristics (such as its length) in order to evaluate whether the loop can support advanced services. (SBC 9/26/02 Chapman Aff. ¶¶ 12-25).

354. SBC Indiana notes that the FCC requires BOCs “to provide access to loop qualification information as part of the pre-ordering functionality of OSS.” Kansas & Oklahoma 271 Order, ¶ 121. Specifically, SBC Indiana observes, the BOC must “provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install.” Id.

355. As part of the pre-order process for xDSL-capable loops and the HFPL UNE, SBC Indiana contends that it provides loop qualification information in full compliance with the UNE Remand Order. (SBC 9/26/02 Chapman Aff. ¶¶ 12-15). SBC Indiana notes that there is no dispute relative to the availability of loop qualification information.

Stand-alone xDSL-Capable Loops

356. SBC Indiana maintains that its ordering process for xDSL-capable loops is, and is shown to be, nondiscriminatory. (SBC 9/26/02 Chapman Aff. ¶¶ 38-42).

Line Sharing

357. SBC Indiana explains that a single copper loop can simultaneously provide voice service on the low frequency portion of the loop and data services on the high frequency portion of the loop (the “HFPL”). (SBC 9/26/02 Chapman Aff. ¶¶ 54-55.) In order to gain access to the HFPL, a piece of equipment called a “splitter” is used to divide the data and voice signals moving across a loop, and, in the case of an all-copper loop, the splitter is installed in the central office.

358. “Line sharing,” SBC Indiana observes, is defined by the FCC as the situation in which an incumbent LEC provides voice service over a loop while a competing LEC provides data service over the high frequency portion of the same loop. In the now-vacated Line Sharing Order, the FCC required ILECs to provide access to the HFPL, which it defined as “the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions.” 47 C.F.R. § 51.319(h)(1). According to SBC Indiana, the FCC limited this obligation to the situation where the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting

carrier seeks access. 47 C.F.R. § 51.319(h)(3); Line Sharing Order, ¶¶ 70, 72; Texas 271 Order, ¶¶ 324.

359. SBC Indiana and its affiliates developed their HFPL offerings in a collaborative “line sharing trial.” SBC Indiana’s HFPL offering, it asserts, was patterned after an offering in Texas, Kansas, Oklahoma, Arkansas and Missouri (where section 271 approval was granted). (SBC 9/26/02 Chapman Aff. ¶ 53). Further, SBC Indiana maintains, even though the FCC has expressly found that incumbent LECs need not provide splitters, SBC Indiana asserts that it provides access to splitters in accordance with the IURC’s orders. (Id. ¶ 58).

Line Splitting

360. “Line splitting,” as distinct from line sharing, SBC Indiana explains, involves an arrangement in which a single CLEC or two partnering CLECs (one providing voice service and one providing data service) provide voice and data services to an end user over a single xDSL-capable unbundled loop. The loop is terminated to a splitter owned and installed by one of the CLECs, according to SBC Indiana, and the splitter, in turn, is connected to the CLEC’s DSLAM equipment at the collocation area. (Id. ¶¶ 84-90; SBC 1/6/03 Reply Comments at 35.) CLECs have the same options available for line splitting in Indiana as they have in Texas, Kansas, Oklahoma, Arkansas, and Missouri, when the FCC has found compliance with section 271. (SBC 9/26/02 Chapman Aff. ¶ 90.)

361. SBC Indiana submitted its proposed line splitting compliance plan (the “Plan” or the “IN Plan”). The Plan modifies the Michigan Line Splitting Implementation Plan for use in Indiana.³⁴ The Michigan Commission proceeded on the assumption that SBC should not reject orders when line sharing ends, because the end user migrates this voice service from SBC retail to a CLEC. SBC Indiana asserts the Michigan Implementation Plan, and the IN Plan, address various options that exist regarding data services that had been provided on the HFPL for four common scenarios.

362. SBC Indiana describes the IN Plan as following the Michigan Plan except for conforming changes required to make the IN Plan consistent with SBC Indiana’s interpretation of federal law. The Michigan Commission rejected SBC Michigan’s position that a data CLEC using the HFPL has the option to purchase the x-DSL capable stand-alone loop over which it was receiving the HFPL UNE if it chooses to continue providing data services, but does not elect to engage in line splitting with the new voice provider. Rather, the Michigan Commission held that the data CLEC must purchase a new, separate stand-alone loop and absorb any costs associated with obtaining the new x-DSL capable loop. In other words, SBC Indiana claims, the

³⁴ The Michigan Public Service Commission addressed these line splitting issues in its December 20, 2001, March 29, 2002 and October 3, 2002, Orders in Case No. U-12320 (collectively referred to as the “Michigan Order.”) In response to those Orders, SBC Michigan filed a Compliance Plan on November 4, 2002, which was amended on December 11, 2002. This draft Indiana Plan is based on the Amended Compliance Plan dated December 11, 2002 and filed in Case No. U-12320.

Michigan Commission's plan favors the voice-service CLEC over the data CLEC in cases where the data CLEC had been line sharing with SBC. SBC Indiana states that the policy evinced by the Michigan Commission is contrary to federal law. To avoid similar alleged problems in Indiana, for purposes of this proposal, SBC Indiana has modified the Michigan line splitting implementation plan for Indiana by removing this provision.

363. The Michigan Commission found that SBC Michigan has no obligation to provide line splitters in a line splitting arrangement. This holding is consistent with existing federal law. This Commission, in Cause No. 40611-S1 Phase II, found that SBC Indiana is required to offer splitters as ancillary equipment to allow access to an HFPL.³⁵ SBC Indiana states that it will comply with this Order unless it is stayed or modified. Pending resolution of these matters in the FCC's Triennial Review Order, the IN Plan has not been modified from the Michigan Plan to address this issue at this time. The IN Plan assumes that, for the purposes of this proposal, the DLEC and/or the CLEC will provide its own splitter in a line splitting arrangement.

2) WorldCom Position

December 2, 2002 Filing

Access to the loop for line splitting via UNE-P

364. It is uncontested, WorldCom claims, that SBC Indiana rejects WorldCom's orders for UNE-P voice service to an end user customer served by a line on which voice and data are provided over that line in a line sharing scenario. Undisputed too, WorldCom asserts, is that SBC Indiana takes the position that there will be disruption to a customer's service – both voice and data – if SBC Indiana would provision line splitting voice UNE-P. Finally, WorldCom argues, it is uncontested that SBC Indiana does not have in place a process or procedure that allows CLECs to order UNE-P voice service provided via line splitting arrangements. For these reasons, WorldCom maintains that SBC Indiana does not comply with Checklist Item 4. (WorldCom 12/11/02 Checklist Comments, at 41-42.)

365. WorldCom asserts that rather than opening the local market to competition, SBC Indiana would rather restrict customer choice and obtain the financial benefits to it that result from denying customers the ability to migrate to a CLEC for voice. (*Id.* at 6.) Further WorldCom complains that multiple order process for changing from line sharing to line splitting over UNE-P will likely cause outages. WorldCom asserts that SBC Indiana should not be allowed to have a multiple order process for orders that disconnect and reconnect lines in this type of migration. (WorldCom 12/11/02 Lichtenberg Affidavit at ¶ 45.)

³⁵ In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection, Service, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes, Cause No. 40611 S1 Phase II, February 17, 2003 Order at 76.

366. WorldCom contends that its line-splitting orders have been improperly rejected. In 2002, SBC Indiana rejected 400 such orders. (WorldCom Lichtenberg Affidavit ¶ 28). These are orders where a customer is presently receiving voice service and DSL service provided by a data CLEC (which could include SBC Indiana's own data affiliate). WorldCom has issued orders simply to migrate the voice service (while leaving the data service intact) and to serve the customer for voice via UNE-P.

367. WorldCom states, referring to the AT&T/Ameritech arbitration in Wisconsin, that where SBC Indiana's data affiliate provides its own splitter, or where another data CLEC provides its own splitter, SBC Indiana must allow line splitting over UNE-P. Yet, WorldCom argues, SBC Indiana has "flatly" refused to do so. (WorldCom 12/11/02 Checklist Comments, at 44.)

368. According to WorldCom, SBC Indiana has conceded that its proposed version of line splitting would entail some "downtime," due to the requirement of contending with removal and reinstallation of the splitter. The WorldCom method of line splitting for migrations, it asserts, would involve no downtime or disruption of voice or data service. This method, WorldCom contends, complies with the FCC directive that migrations "avoid" voice and data service disruptions. (Id.)

Comments on Line Splitting Plan

369. WorldCom claims that SBC Indiana's Line-Splitting Compliance Plan gives improper preference to data CLECs. (WorldCom 4/28/03 Comments on Line Sharing and Line Splitting Compliance Plan, at 7.) WorldCom suggests that if SBC Indiana gives a data CLEC the right to obtain the existing unbundled loop facility over which it is currently line sharing in the event the end user's SBC Indiana retail voice service is disconnected, SBC Indiana is somehow giving the data CLEC "preferential treatment." (Id.) AT&T also appears to support this position. See AT&T 4/28/03 Comments at 8.

370. MCI also claims that the Line Sharing Order does not give the data provider the right to lease the same loop it was using in a line sharing arrangement in the event SBC Indiana's retail POTS service is disconnected. (WorldCom 4/28/03 Comments on Line Sharing and Line Splitting Compliance Plan, at 10 -11.) WorldCom suggests that only SBC Indiana's data affiliate can engage in line sharing. (Id. at 8.) WorldCom also claims that SBC Indiana's data affiliate "refuses" to engage in line splitting.

371. WorldCom next addresses the policy established by SBC Midwest regarding use of the same version of EDI when placing line splitting orders using a given OCN. (Id. at 18 & 19.) MCI also raises issues about the charges it claims SBC Indiana is proposing. (Id. at 14.) MCI also alleges that SBC Michigan's appeal of the Michigan line splitting order is evidence that SBC has "no intention" of complying with its legal obligations. (Id. at 23.)

3) OUC Position

372. The OUC agreed with the concerns the CLECs raised regarding the three-order process SBC Indiana currently requires CLECs to follow when requesting that existing line-sharing arrangements with SBC Indiana be changed to line-splitting arrangements between CLECs, where at least one of the CLECs has a UNE-P wholesale arrangement with SBC. It deferred to the CLECs to identify other issues.

4) Time Warner Position

373. "Dark fiber is deployed, unlit fiber optic cable that connects two points within the incumbent LEC's network." UNE Remand Order, ¶ 325. It is fiber that has not been activated through connection to the electronics that "light" the fiber and thereby enable it to carry telecommunications services. Id. Time Warner contends that the definition of dark fiber in Ameritech Indiana's approved interconnection agreements "excludes" fiber that is not terminated at both ends.

5) AT&T Position

Unbundled Loops Provisioned using the NGDLC Loop Network

374. SBC Indiana is required, AT&T contends, to make its loop facilities using NGDLC technology available as unbundled network elements with rates, terms and conditions governed by Sections 251 and 252 of the Act. According to AT&T, however, SBC Indiana has steadfastly refused to provide competitive carriers with unbundled loops provisioned using the Project Pronto technology. AT&T argues that SBC Indiana cannot be allowed to avoid its obligation to unbundle UNEs, by use of DLC technology that would create one network for SBC Indiana, and a very limited, less technologically advanced, inherently unequal network for CLECs.

375. AT&T recognizes that SBC's ILEC operating companies offer Broadband Services on a wholesale basis to affiliated and unaffiliated advanced services providers where Project Pronto DSL equipment is deployed. AT&T asserts, however, that SBC Indiana cannot avoid offering unbundled loops using this new technology simply by offering a resale alternative. The FCC rules, AT&T argues, designate that unbundled network elements are technology independent, meaning that SBC Indiana cannot avoid provisioning UNE loops to CLECs over its NGDLC loop network.

376. According to AT&T, CLECs must have access on an unbundled basis to the entire NGDLC loop. The FCC, it observes, defined the unbundled local loop in its UNE Remand Order. Since a loop is defined as a transmission facility between the NID and the MDF or its equivalent, AT&T maintains that the IURC should avoid placing any restrictions on loop unbundling related to "end-to-end path" requirements and interfaces on either side of the loop. The FCC, it argues, has defined the local loop network element in a forward-looking manner so as to include the deployment of outside plant facilities in the ILEC's network utilizing new technologies. So too, AT&T argues, the FCC defined the local loop as a "transmission facility" and further included various transmission levels, including high capacity loops, in the definition. A transmission

facility, AT&T states, can be copper, fiber, or a hybrid between fiber and copper, such as is the case with loops served over fiber-fed Digital Loop Carriers.

377. AT&T contends that it needs access to the entire NGDLC loop spectrum so that it can offer voice as well as DSL service to its customers, just as SBC Indiana can. Thus, AT&T contends, SBC Indiana must be held to its obligation to provide the entire Project Pronto loop consistent with the FCC's UNE Remand Order. AT&T further contends that sheer size and scope of Project Pronto, and SBC Indiana's unwillingness to unbundle the architecture, make monopolization of the advanced services market a real possibility.

378. AT&T reasserts that SBC Indiana's Broadband Service offering is no substitute for the unbundling of Project Pronto. According to AT&T, the IURC must weigh this inferior alternative supply of network elements against the prospect of the Project Pronto elements offered in an unbundled fashion when measuring whether SBC Indiana should be required to unbundle the Project Pronto network.

Line Splitting -Generally

379. AT&T asserts that the provision in the IN Line Splitting Plan allows the data CLEC to retain the loop that discourages line splitting. AT&T also claims that SBC Indiana's data affiliate "refuses" to engage in line splitting. (AT&T 4/28/03 Comments at 8.)

380. AT&T goes on to suggest that SBC Indiana should develop carrier-specific order processes to address the handling of CLEC choice. AT&T complains about the policy established by SBC Midwest regarding use of the same version of EDI when placing line splitting orders using a given OCN. (*Id.* at 11-13.) AT&T claims that BearingPoint did not test SBC Indiana's provisioning of line splitting. (*Id.* at 5-6.)

381. AT&T takes the position that SBC Indiana is legally obligated to provide two distinct arrangements -- line sharing and line splitting -- in parity with one another. (*Id.* at 4.) AT&T also raises issues about the charges it claims SBC Indiana is proposing. (*Id.* at 15.)

UNE-P with Line Splitting

382. AT&T contends that SBC Indiana has resisted making available line splitting, as it is required to do. The essence of "line splitting" AT&T informs, is the ability of a "voice" CLEC, by itself or in a partnering arrangement with a "data" CLEC, to offer both voice and data services over one loop. (AT&T 12/11/02 Fettig Affidavit ¶ 24). AT&T sees SBC Indiana to maintain that once the cabling to the CLEC DSLAM is installed for the UNE-P customer, the line splitting arrangement is no longer UNE-P. According to AT&T, SBC Indiana considers any subsequent changes to this customer a new UNE combination. (*Id.*) In other words, SBC Indiana would require the UNE-P carrier to order a *new* loop (even if it turns out to be the existing loop) and a *new* switch port in every case that line splitting is sought. Inherent in this position, AT&T contends, is the certainty that every time a UNE-P customer seeks line splitting, there will be a service

disconnection, the potential for an extended period of loss of dial tone, an increased chance of loss of facilities (such as working telephone number, facilities assignment), increased complexity in the ordering process, and increased numbers of nonrecurring service order charges. (*Id.* ¶ 29.)

383. AT&T maintains that the Verizon decision undermines SBC Indiana's contentions about whether UNE-P remains UNE-P with line splitting. AT&T asserts that not only are ILECs prohibited from separating already-combined network elements before providing them to CLECs, the FCC's rules require the incumbent to combine elements for requesting carriers, and that this obligation extends to both those combinations of elements that are ordinarily combined in the ILEC's network and those that are not. (*Id.* ¶ 27.)

6) SBC Indiana Reply Position

Stand-alone Loops

384. There is no real dispute, SBC Indiana maintains, as to its offering of traditional, voice-grade loops. There is no basis to AT&T's claim that SBC Indiana does not provide loops served via NGDLC, the Company asserts, because it does offer such loops. (See SBC 1/8/03 Chapman Reply Aff. ¶ 3).

Line Splitting

385. SBC Indiana contends that it complies with this pre-USTA requirement and, as with line sharing, permits line splitting in a manner identical to the offerings that already have been approved by the FCC for section 271 purposes. (SBC 1/08/03 Reply Comments at 35; SBC 9/26/02 Chapman Aff. ¶¶ 90; Texas 271 Order, ¶ 327; Kansas & Oklahoma 271 Order, ¶¶ 220-221; Arkansas & Missouri 271 Order, ¶ 106.)

386. According to SBC Indiana, line splitting is not a UNE - and was not a UNE even before USTA. The FCC, SBC Indiana avers, limited the HFPL UNE to the situation in which the incumbent LEC continues to provide voice service over the low-frequency portion of the loop. That prerequisite is by definition, SBC Indiana contends, inapplicable in line splitting, where CLECs provide both the voice and data service over the loop and the incumbent does not provision any service to the end user. (SBC 1/08/03 Reply Comments at 35.)

387. The incumbent's only obligation, SBC Indiana claims, was to *permit* CLECs to *engage* in line splitting in the situation where the CLEC (or two partnering CLECs) purchases an unbundled loop and provides its own splitter – there was no actual UNE involved (other than the unbundled loop that the CLEC would lease from SBC Indiana) and there were no other situations where ILECs were required to permit line splitting. Texas 271 Order, ¶¶ 324-325; Line Sharing Reconsideration Order, ¶ 19. (SBC 1/08/03 Reply Comments at 35.)

388. The issues with respect to line splitting, SBC Indiana notes, do not really bear on compliance with any FCC order. In reality, SBC Indiana argues, the CLECs

attempt to create new requirements that the FCC have already rejected. There is a fundamental difference between line splitting as it was defined by the FCC, SBC Indiana asserts, and the "line splitting service" that the CLECs contend SBC Indiana is required to provide. (SBC 1/08/03 Reply Comments at 36.)

389. SBC Indiana notes that in the situation where it is engaged in a "line sharing" arrangement with a data CLEC (using a splitter provided by the data CLEC), and the end-user switches voice service from SBC Indiana to a voice CLEC desiring to use the "UNE-P," AT&T proposes that SBC Indiana be required to "migrate" the end-user's voice service to what it calls a "UNE-P" arrangement, with the data CLEC's splitter becoming a part of this so-called "UNE-P" arrangement. The UNE-P, SBC Indiana explains, is comprised of the loop connected directly to the switch port – it is precombined without the splitter. UNE Remand Order, ¶ 12; Line Sharing Order, ¶ 72 n.161; Texas 271 Order, ¶ 218. As such, it is not technically possible to "line share" or "line split" with a UNE-P arrangement. Rather, in order to provide both voice service and data service on a loop that is part of a UNE-P combination, the loop and switch that make up the UNE-P must be disconnected and a splitter installed between the two. (*Id.*)

390. There are numerous reasons, SBC Indiana contends, why the CLEC's "line splitting service" proposal is contrary to law, even before USTA. It sets these out as follows:

(1) The CLEC proposal, SBC Indiana contends, would require it to provide CLECs access to the low frequency portion of the loop, so as to provide voice service on any loop used by a data CLEC to provide data service. In other words, SBC Indiana contends, it would be required to unbundle the low frequency portion of the loop. But even prior to USTA, the FCC concluded that the low frequency portion of the loop need not be unbundled:

"In the Line Sharing Order, the FCC unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes." Texas 271 Order, ¶ 330 (emphasis added).

(2) The CLEC proposal also would require SBC Indiana to provide unbundled access to the high frequency portion of the loop in situations where SBC Indiana is no longer providing voice service on the loop. Prior to USTA, SBC Indiana contends, the FCC repeatedly held that incumbents need offer the HFPL *only in the situation* where they provided the end-user's voice service:

"[I]ncumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops on which the incumbent LEC is also providing analog voice service." Line Sharing Order, ¶ 72 (emphasis added).

"[I]ncumbents are not required to provide unbundled access to carriers seeking just the data portion of an otherwise unoccupied loop, because line sharing contemplates that the incumbent LEC continues to provide POTS services on the lower frequencies while another carrier provides data services on the higher frequencies." Id.

"[T]he record does not support extending line sharing requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop." Id.

"[I]n the Line Sharing Order, the Commission limited line sharing 'to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the [competing] carrier seeks access.' In other words, a competing carrier seeking to provide xDSL service using the unbundled high frequency portion of the loop can do so only if the same loop is used by the incumbent LEC to provide voice service to an end user." Line Sharing Reconsideration Order, ¶ 17.

"[W]e deny AT&T's request for clarification that under the Line Sharing Order, incumbent LECs are not permitted to deny their xDSL services to customers who obtain voice service from a competing carrier where the competing carrier agrees to the use of its loop for that purpose. Although the Line Sharing Order obligates incumbent LECs to make the high frequency portion of the loop separately available to competing carriers on loops where incumbent LECs provide voice service, it does not require that they provide xDSL service when they are not [sic] longer the voice provider." Line Sharing Reconsideration Order, ¶ 26.

(3) The FCC's rules, SBC Indiana contends, only require incumbent LECs (where technically feasible), to perform the functions necessary to combine unbundled network elements with other unbundled network elements or with elements possessed by the requesting carrier, and even then, only when the requesting carrier is unable to combine the elements itself. 47 C.F.R. § 51.315(c)-(f); First Report and Order, ¶ 294; Verizon, 122 S. Ct. at 1685, 1687.

The CLEC proposal would require it to provide at least one type of "combination" that is outside federal law even prior to USTA. Specifically, SBC Indiana asserts, the CLECs' proposal would require SBC Indiana to combine UNEs (namely, the loop, switch port, and shared transport comprising the UNE Platform) with something that is not a UNE (the splitter). In order for a CLEC leasing the UNE-P to provide both voice and data service over the loop, SBC Indiana explains, the switch port and copper loop that made up the UNE-P must be disconnected and recombined with the splitter and any other CLEC advanced services equipment (such as a CLEC DSLAM) to provide the

“shared” use of the loop by both data and voice services. (SBC 1/08/03 Chapman Reply Aff. ¶¶ 19-27.)

(4) Where the data CLEC provides the splitter in a line sharing arrangement, SBC Indiana observes, it has processes in place to migrate (without any service disruption) a line sharing arrangement into a line splitting arrangement so long as the data CLEC agrees to “line split” with the voice CLEC. WorldCom and the other CLECs however propose that it be required to migrate the service even though the data CLEC has not agreed to permit the requesting carrier to use its equipment. (SBC 1/08/03 Reply Comments at 38; SBC 1/08/03 Chapman Reply Aff. ¶¶ 42-47.)

The CLEC proposal would require SBC Indiana to permit line splitting in situations beyond where a CLEC (or two partnering CLECs) purchases an entire unbundled loop and provides it own splitter, in conflict with the FCC’s pre-USTA decisions in the Texas 271 Order (¶ 324) and Line Sharing Reconsideration Order (¶ 19).

(5) The CLEC proposal would also require a data CLEC (whether it be SBC Indiana’s data affiliate or another CLEC with whom SBC Indiana is line sharing) to continue providing data service over the HFPL when an end-user transfers its voice service from SBC Indiana to a CLEC (WorldCom Lichtenberg 12/11/02 Aff. ¶ 31 (stating that WorldCom “opposes the removal of DSL service from the customer’s line” because the voice provider has changed, in violation of the FCC’s pre-USTA determination on the issue. Line Sharing Order, ¶ 72; Texas 271 Order, ¶¶ 324, 330; Line Sharing Reconsideration Order, ¶ 26.

(6) The CLEC proposal would inappropriately put SBC Indiana in the position of managing the relationship between CLECs engaged in line splitting even though: the CLECs can perform (and are in a better position to perform) this function for themselves; even though SBC Indiana has no relationship with the end-user; and, even though the FCC’s orders explicitly describe line splitting as a voluntary arrangement involving two CLECs, coordinated by those CLECs. Line Sharing Reconsideration Order, ¶ 22 (noting that “a formerly line sharing data carrier also could enter into a *voluntary* line splitting arrangement with a new voice carrier,” and that the FCC “expect[s] *competing carriers to cooperate* in such an arrangement in order to avoid service disruption for their shared end user customer”). (SBC 1/08/03 Reply Comments at 40; SBC 1/08/03 Chapman Reply Aff. ¶ 41.)

“Single Order” Processes

391. For some products or services, SBC Indiana requires CLECs to submit more than one Local Service Request (“LSR”), with each separate request devoted to a specific step in provisioning the order. WorldCom contests the three-LSR process that is currently used to convert a line sharing arrangement (ILEC provides voice service and CLEC provides data service on the same loop) to a line splitting arrangement (CLEC provides voice service and the CLEC, or a partnering CLEC, provides data service on the same loop).

392. According to SBC Indiana, the FCC has never required incumbents to implement a single-order process for any product. To the contrary, it has approved Section 271 applications by applicants that used multiple-order processes, despite CLEC objections. Texas 271 Order, ¶¶ 198-200 (finding that SWBT provided nondiscriminatory provisioning of UNE Platform orders, notwithstanding use of a three-order process). In particular, SBC Indiana notes, the FCC has upheld the use of multiple-order processes for Special Access and line splitting conversions. See Kansas & Oklahoma 271 Order, ¶ 176 (“E.spire argues that SWBT’s two-step process for converting access circuits to UNE pricing, which requires a requesting carrier to complete both an ASR and LSR, violates the rules set forth in the Supplemental Order Clarification governing EEL provisioning. We disagree.”); New Jersey 271 Order, ¶ 135 (“AT&T claims that Verizon’s [two-step] ordering process for line splitting is burdensome In addition, AT&T charges that this two-step process is discriminatory We reject these challenges, and find that Verizon’s ordering process for line splitting in New Jersey allows efficient competitors a meaningful opportunity to compete.”).

393. SBC Indiana acknowledges that the FCC has encouraged carriers to work together to resolve line splitting issues, including the CLECs’ desire for a single order process. See Line Sharing Reconsideration Order, ¶ 21 (“[W]e encourage incumbent LECs and competing carriers to use existing state collaboratives and change management processes to address, among other issues: developing a single-order process for competing carriers to add xDSL service to UNE-platform voice customers”). SBC Indiana avers that it has complied with that recommendation. It has implemented a single-LSR process for converting an existing UNE-P arrangement into the UNEs necessary for line splitting. (SBC 1/08/03 Chapman Reply Aff. ¶¶ 48-49.)

Rejection of WorldCom “Line Splitting” Orders.

394. The assertions regarding its rejection of WorldCom’s “line splitting” orders are, in SBC Indiana’s view, just another facet of WorldCom’s attempt to avoid obtaining a data CLEC’s permission to use its facilities. The orders to which WorldCom refers, SBC Indiana contends, were rejected because WorldCom did not follow the established ordering procedures posted on the CLEC Online website. (SBC 1/08/03 Chapman Reply Aff. ¶¶ 42-47). In each instance, SBC Indiana maintains, WorldCom sought to provide voice service over a data CLEC’s network (that is, by using the data CLEC’s splitter), without the data CLEC’s permission, which is evidenced on the order form by providing the Connecting Facility Assignment. (*Id.* ¶¶ 42-47, 52).

395. Splitting a line, SBC Indiana asserts, is inherently a consensual arrangement between CLECs. See Line Sharing Order, ¶ 73 n.163 (noting that if an end user “switches its voice provider from the incumbent LEC to a competitive LEC that provides voice services,” the data CLEC “may enter into a voluntary” sharing arrangement with the voice LEC). SBC Indiana cannot be held responsible, it argues, for WorldCom’s failure to secure permission to use another CLEC’s facilities or to follow the proper ordering procedures. (SBC 1/08/03 Reply Comments, at 41.)

The "End to End Broadband UNE" ("Project Pronto")

396. Project Pronto is an SBC initiative, SBC Indiana explains, that is designed (among other things), to bring advanced services using DSL technology to millions of additional customers. On the "customer" side of the network (the portion of the SBC ILEC's network running from the central office to the end user's premises), Project Pronto involves the installation by SBC's ILEC subsidiaries of a new "overlay network consisting of fiber facilities connected to advanced services equipment (including packet switching equipment) and includes installation of such equipment in central offices as well as remote terminals located deeper into the residential neighborhoods of its ILECs' services areas." FCC Project Pronto Order, ¶ 4 and App. B.

397. Where it is deployed, the relevant portion of the Project Pronto DSL architecture (from the central office to the end-user) involves use of the following facilities (Id.):

Copper distribution pairs from an end-user's premises to a Serving Area Interface ("SAI");

Copper feeder pairs between an SAI and a Project Pronto remote terminal ("RT");

"Next Generation" Digital Loop Carrier equipment deployed within the RTs that, among other things, digitizes, packetizes, and aggregates data signals from the end-user customer and provides the capability to offer both voice and data services;

An ADLU line card, installed in a slot of a Channel Bank Assembly in the NGDLC, which (in conjunction with other NGDLC hardware and software) separates the high-frequency (data) portion of the copper loop from the low-frequency (voice) portion;

Separate fibers between the RT and the central office for voice and data traffic;

Asynchronous Transfer Mode ("ATM") packet switches, also referred to as Optical Concentration Devices ("OCDs"), deployed in the CO, which provide packet switching functionality, including routing and aggregation, for directing DSL traffic to the appropriate CLEC; and

Central Office Terminals ("COTs") used to provide POTS connectivity for voice traffic to the ILEC local switch and/or CLEC collocation equipment.

398. To the extent the CLECs suggest that SBC Indiana is not in compliance with its section 271 obligations of providing unbundled access to the piece-parts of the Project Pronto DSL architecture or permitting CLECs to "collocate" their own line cards

in the Project Pronto NGDLCs, SBC Indiana responds that the CLECs are wrong on these counts because such “unbundling” and “collocation” are not required by either the FCC or by the IURC.

399. SBC Indiana points out that the FCC reviewed the planned Project Pronto DSL architecture in a proceeding lasting almost nine months, after which it found that SBC’s ILECs (as opposed to their separate data affiliates) could own key components of the new architecture, specifically the NGDLC line cards and the packet switch (or “OCD”) in the central office. The FCC, required SBC’s ILECs to:

- (1) make room in Project Pronto Remote Terminals so that CLECs could collocate their own packet switching DSLAMs, and
- (2) provide CLECs with a wholesale end-to-end Broadband Service offering over the Pronto DSL architecture at TELRIC-based prices.

400. The FCC did not, SBC Indiana maintains, require SBC’s ILECs to unbundle the piece-parts of the Project Pronto DSL architecture or permit CLECs to collocate their own line cards in the Pronto NGDLCs. Indeed, SBC Indiana notes, the FCC did not require any unbundling whatsoever in conjunction with the Project Pronto DSL architecture. It only required ILECs to provide an end-to-end Broadband service. To this end, SBC Indiana maintains, the FCC explained that its decision was designed to balance the goals of the 1996 Act by “enabl[ing] competitors to provide advanced services in SBC’s territory, while at the same time facilitating deployment [by SBC] of advanced services to the mass market.” FCC Project Pronto Order, ¶ 1.

401. Thereafter, SBC Indiana contends, the CLECs asked this Commission to require SBC Indiana to “unbundle” the integrated Pronto DSL architecture into piece-parts and permit CLECs to “collocate” their own line cards in the new NGDLC equipment. According to SBC Indiana, however, the FCC’s Project Pronto Order and the IURC’s Order in Cause No. 40611-S1 mean that piece-part unbundling of the Project Pronto DSL facilities and NGDLC line card collocation are not a part of any section 271 checklist item and thus, are not viable disputes for this proceeding.

Line Splitting Compliance Plan Reply

402. As a general observation, SBC Indiana claims that the CLECs’ have not evaluated the IN Line Splitting Plan in the context of SBC Indiana’s Section 271 checklist obligations; rather, SBC Indiana avers, they have raised a number of issues unrelated to checklist compliance. (SBC Indiana 5/01/03 Reply Comments, at 1-2.) SBC Indiana gives as an example that the IURC has ordered that SBC Indiana must make available line splitters for line splitting but the FCC has repeatedly held that ILECs are not obligated to provide splitters under any circumstances to demonstrate Section 271 checklist compliance. Consequently, SBC Indiana points out the Plan did not address provisioning of splitters as that is not related to the Section 271 checklist. (Id.)

403. SBC Indiana asserts that it complies with the IURC's orders as to these issues, without in any way altering or waiving its positions as set forth during those proceedings, including in its motion for stay or reconsideration of several aspects of the Cause No. 40611 S1 Phase II Order, or its rights, remedies, and arguments with respect to the USTA decision or the Triennial Review Order. Nonetheless, SBC Indiana notes that the Plan must be reviewed within the Section 271 framework.

404. SBC Indiana, in response to MCI's claim that the Plan improperly grants preference to the data carrier, notes that in fact, the IN Line Splitting Plan does not give "preference" to either the data carrier or the voice carrier. (*Id.* at 3.) Rather SBC Indiana claims the Plan complies with the applicable FCC rules, in which the FCC attempted to achieve a fair balance between the two providers in accordance with the FCC's rules. (*Id.* at 2-3.)

405. SBC avows that MCI fails to appreciate that the existing data CLEC serving the end user has deployed its own facilities and is currently providing a customer service over an SBC Indiana facility for which the data CLEC has invested its resources to provision. Furthermore, the FCC's *Line Sharing Order* obligates SBC Indiana to allow the existing data CLEC, who is providing xDSL-based service on the HFPL when an ILEC's retail POTS service is disconnected, to be given the opportunity to continue to use that same loop facility to provide service if it chooses to lease the existing xDSL capable unbundled loop. *Line Sharing Order* ¶¶ 72-73. Paragraph 72, in pertinent part, provides: "We note that in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service." Paragraph 73, in pertinent part, provides: "...in order to continue to provide data services to that customer, the competitive CLEC must purchase the entire unbundled loop and must pay the incumbent LEC the forward looking cost for that unbundled network element. We find it unacceptable, and potentially discriminatory under section 201 or a violation of section 251 obligations, however, for the incumbent to cause or require any interruption of the competitive LEC's service in order to execute such a loop access status change." (Footnote omitted).

406. SBC Indiana contends that the basis for the FCC's determination as to the avoidance of disruption of xDSL service in this context is predicated on its ruling that line sharing arrangements are contemplated with CLEC-provided splitters. As a result, the FCC contemplated there would be no disruption of the data service to an end-user when said end-user elects to terminate its ILEC-provided voice service, but keep its CLEC-provided data service intact (and the CLEC is providing the splitter in connection with the line shared arrangement). This is because the cross-connect for the voice service could be removed when the ILEC retail POTS is disconnected, but the cross-connect for the CLEC's xDSL-based service could be left intact if the CLEC was providing its own splitter for purposes of line sharing. (SBC Indiana 5/01/03 Reply Comments at 3-4.)

407. SBC Indiana believes that simple reading of the language in paragraphs 72 and 73 of that order belies MCI's claim that the Line Sharing Order does not give the

data CLEC a right to the same loop. The FCC clearly ruled, SBC Indiana claims, that the data carrier is required to lease "the" entire unbundled loop (as opposed to "a" loop which could arguably be a different loop), in such event if the data CLEC wishes to continue to provide xDSL-based service to the same end-user customer via an ILEC xDSL capable loop. SBC Indiana believes that any requirement it may have that a data CLEC lease a different loop (which also might require conditioning, and may or may not be immediately available), would be inconsistent with the very plain language in the FCC's Line Sharing Order in this regard. See also Line Sharing Reconsideration Order ¶ 2.

408. SBC Indiana claims that MCI is wrong when it suggests that only SBC Indiana's data affiliate can engage in line sharing. (SBC Indiana 5/01/03 Reply Comments, p. 4.) Consistent with the FCC's Line Sharing Order, any CLEC may lease the high frequency portion of the loop ("HFPL") to provision xDSL-based service on the same loop that SBC Indiana is provisioning retail POTS service to the same end-user at the same location. Line sharing is currently available to any CLEC that wishes to engage in it and several CLECs in Indiana do currently line share with SBC Indiana.

409. However, SBC Indiana asserts that SBC Indiana's advance services affiliate has repeatedly and publicly, in various SBC/CLEC collaboratives, expressed its willingness to negotiate with interested voice providers to develop mutually agreeable terms to engage in line splitting. (Id. at 5.)

410. SBC Indiana states that it is not the case, as AT&T claims, that allowing the data CLEC to retain the loop somehow discourages line splitting. SBC Indiana notes that retaining the loop for the provision of DSL-only service is only one of the options available to the data CLEC in the IN Line Splitting Plan, in the event the end user's SBC Indiana retail POTS is disconnected. Another option is for the data CLEC to enter into a voluntary line splitting relationship with the voice CLEC or for the data CLEC to disconnect its data service to the end-user customer. SBC Indiana does not advise, encourage or discourage a data CLEC from making any of these choices. Instead, each data CLEC is free to make its choice based upon its own business plan. (Id. at 5.)

411. SBC Indiana notes that CLECs today already have, and have had, the ability to engage in line splitting by ordering UNEs (including UNE xDSL-capable loops, and UNE switching), and SBC Indiana has developed a single-LSR process, at the CLECs' request, to convert UNE-P to line splitting. (Id.) Contrary to MCI's claim, SBC Indiana emphasizes that it is not refusing to implement a single-LSR process for such conversions. (Chapman 5/08/03 Reply Aff. ¶ 5.) SBC Indiana also claims that AT&T mischaracterizes the nature of the LSRs that make up this process. (Id. ¶ 7.) SBC describes the purpose of the LSRs as follows:

- Disconnect the HFPL UNE. In a line splitting arrangement, SBC Indiana is no longer providing an HFPL UNE to the data provider. The HFPL must be disconnected so that an entire xDSL-capable loop (consisting of both the high and low frequencies) can be provided to the requesting CLEC.

- Establish a new xDSL-capable loop for the requesting CLEC. The existing loop facility is reused. The loop will include the entire frequency spectrum (both high and low frequencies).
- Establish an unbundled switch port with transport for the requesting CLEC. The existing port is reused.

These various activities must take place to ensure not only that billing is handled correctly, but also so that the elements are inventoried correctly in the various provisioning systems. (*Id.* ¶ 8.)

412. SBC Indiana contends that AT&T's proposal for an additional CLEC ordering process is unnecessary and would be difficult to attempt to implement and administer. SBC Indiana asserts that it would require that SBC Indiana develop a CLEC-specific process, as demanded by each CLEC, which could differ by CLEC and would require significant modifications to SBC Indiana's OSS. Such a requirement would not only require extensive costs, SBC Indiana claims, but would also put SBC Indiana in the role of a mediator between competing carriers, something that neither the FCC nor the IURC has required. In any event, SBC Indiana proposes that this type of process modification would be better considered in an appropriate Change Management or CLEC User Forum – SBC Indiana argues that it is not properly part of a Section 271 checklist review proceeding. (*Id.* ¶ 6.)

413. SBC Indiana responds to the MCI and AT&T complaint about the policy established by SBC Midwest regarding use of the same version of EDI when placing line splitting orders by noting that CLECs themselves requested the current versioning policy and did not raise the present complaint when that policy was developed. SBC Indiana notes that WorldCom did not challenge SBC's versioning policy in the California or Nevada Section 271 proceedings – even though SBC Indiana uses the same versioning policy as both of those states. Indeed, SBC Indiana notes that this versioning policy dates back to SBC's Texas 271 application, when CLECs first requested versioning, and the FCC found that policy to be sufficient in its Kansas and Oklahoma, Arkansas and Missouri, and California 271 orders. (SBC 5/01/03 Cottrell Aff. ¶¶ 7-14.)

414. SBC Indiana believes that BearingPoint's testing of line splitting is adequate, as SBC rolled out, in the Midwest region states, a new single LSR process for converting UNE-P to line splitting on August 3, 2002. The BearingPoint OSS testing had substantially concluded by that time; therefore, BearingPoint did not specifically evaluate the new single LSR for the conversion of UNE-P to line splitting. However, BearingPoint did test the service orders that previously would have resulted when CLECs had to submit three LSRs to convert from UNE-P to line splitting (which are now underlying the service orders that SBC Indiana will internally generate if it receives a single LSR to convert UNE-P to line splitting). In sum, the three underlying internal service orders used by SBC Indiana to provision the conversion of UNE-P to line splitting were tested by BearingPoint, and BearingPoint judged SBC Indiana's provisioning of these three service orders satisfactory. SBC Cottrell 5/01/03 Aff. ¶¶ 3-6. Thus, SBC Indiana believes that BearingPoint's OSS testing does provide a reliable

indication of the capability and capacity of SBC Indiana's OSS to process line splitting orders.

415. AT&T's request for "parity" between line sharing and line splitting should be rejected, SBC Indiana asserts, as line sharing and line splitting are two very different processes for which the ILEC has very different obligations. See Texas 271 Order, ¶ 324: "Line sharing and line splitting present two different scenarios under our rules." See also *Line Sharing Reconsideration Order*. SBC Indiana believes that no such requirement now exists and the IURC should not create one in this proceeding. Indeed, AT&T does not argue that this is an FCC requirement. Rather, AT&T urges the IURC to adopt this as a new requirement under a general "non-discrimination" theory.

416. SBC Indiana argues that any non-discrimination analysis should focus on how SBC Indiana provisions the DSL-capable unbundled loops and ULS-ST ports necessary for line splitting. As AT&T recognizes, line splitting is not a UNE. (AT&T 4/28/03 Comments at 4.) SBC Indiana provides unbundled elements that CLECs may use to engage in a voluntary line splitting arrangement. The DSL-capable unbundled loops and ULS-ST ports and transport used to support line splitting – just like other UNEs – are already included in the relevant performance measurements and are subject to remedy payments if provisioning intervals fall below the required standard. (SBC Indiana 5/01/03 Comments at 9)

417. SBC Indiana contends that the appropriate analog of comparison for HFPLs provided to SBC Indiana's data affiliate would be the HFPLs provided to non-affiliated data CLECs. There is no claim that SBC Indiana discriminates in line sharing situations, and it would be unreasonable to make direct comparisons between line sharing and line splitting given the significant business and operational differences between the two arrangements. SBC Indiana describes the relationship of SBC Indiana with the data CLEC in a line sharing arrangement is very different than with CLECs involved in a typical line splitting arrangement. In a line sharing arrangement, the data CLEC is SBC Indiana's customer for the HFPL. SBC Indiana has a contractual or tariff relationship with the data CLEC, and SBC Indiana will interface directly with the data CLEC. In a line splitting arrangement, on the other hand, SBC Indiana's customer of record is the CLEC that leases the UNEs used in the arrangement. Differences between how SBC Indiana interacts with a data CLEC in a line sharing arrangement versus a line splitting arrangement have absolutely nothing to do with discrimination. Instead, these differences are the natural result of the fact that in one instance, the data CLEC is SBC Indiana's direct customer of record, and in the other, the data CLEC is likely not SBC Indiana's direct customer of record – but rather obtains access to the high frequency of the loop from the voice CLEC that has purchased the unbundled DSL capable loop. Most significantly, according to SBC Indiana, these differences are the result of, and were established by, the FCC in the context of its prior orders, including but not limited to its Line Sharing and Line Sharing Reconsideration Orders (*Id.* at 10-11.)

418. While MCI and AT&T also raise issues about the charges SBC Indiana is proposing, SBC Indiana says it is not proposing any new line splitting specific charges

but is applying the established charges for the requested UNEs. SBC Indiana also clarifies SBC Indiana's current order processes to handle requests to change from an existing line sharing arrangement to a line splitting arrangement and AT&T complaints about the process available when a CLEC requests that an existing line sharing arrangement be converted to a UNE-P only arrangement. (SBC Chapman Aff. ¶¶ 3-10.) SBC Indiana also notes that, while MCI raises the issue of the other scenarios for line splitting that were filed in Michigan, at this point in the Michigan collaboratives, SBC has simply provided information regarding its current processes. These processes are also available in Indiana. There is no "new" information to be provided at this time and there are no "plans" that are being developed for these scenarios as a result of the Michigan collaborative. SBC Indiana also notes that the parties have decided it is best to wait until after the release of the FCC's Triennial Review order to continue the collaborative on these issues and, SBC Indiana argues, to do something different in Indiana would only serve to create unwarranted delay. (*Id.* ¶¶ 13-14.)

419. SBC Indiana claims that MCI's suggestion that appealing orders is somehow evidence of the intent not to comply with such orders is illogical. If the IURC's orders are sustained on judicial review, they will remain in effect and the objections are unfounded. If, however, a court deems the order unlawful (as SBC Indiana contends), then the CLECs' position on a given issue could be equally unlawful. SBC Indiana asserts it would be improper for the Commission to attempt to circumvent judicial review or punish SBC Indiana for exercising its constitutional right to appeal.

Dark Fiber

420. With respect to Dark Fiber, SBC Indiana states that there is no dispute but that it provides access to dark fiber that terminates on a fiber distribution frame or equivalent on both ends. According to SBC Indiana, the "exclusion" Time Warner challenges comes from the FCC, not SBC Indiana. The FCC has clearly held that its unbundling rules do not apply to fiber that is not terminated at both ends. Delaware & New Hampshire 271 Order, ¶ 122 ("BayRing is not correct that Verizon must make available dark fiber that is not already terminated at accessible terminals.").

421. SBC Indiana states that Time Warner's challenges to the information SBC Indiana provides on dark fiber are also incorrect. SBC Indiana provides information on dark fiber on an individual request basis. In order to obtain information on dark fiber, the requesting carrier specifies the two locations that it wishes to connect using dark fiber. (SBC 9/26/02 Deere Aff. ¶¶ 111, 169.) The procedure and forms for such inquiries are contained in SBC Indiana's on-line CLEC handbook. (*Id.* ¶ 113.) This procedure is reasonable, SBC Indiana argues, as a CLEC that has any concrete need for fiber would necessarily know the location of the facilities or end users it wants to connect. Further, providing information on dark fiber between two points is consistent with the FCC holding that its dark fiber rules apply only to fiber that is terminated at both points.

422. SBC Indiana adds that the 1996 Act does not require SBC Indiana to create databases or design its competitors' networks for them, and Time Warner provides no legal authority to show that such access is required.

423. If a CLEC requests information on dark fiber, and Ameritech Indiana responds that dark fiber is not available between the locations specified, the CLEC may contact its Account Manager and request a review. See generally Schenk Aff. ¶¶ 12, 15-16, 23. To the extent that review does not resolve the CLEC's concern, it may use the dispute resolution provisions of its Commission-approved interconnection agreement. SBC Indiana states that Time Warner makes no showing that the standard dispute resolution procedures – which, after all, appear in Commission-approved interconnection agreements – are insufficient in any substantive way. Nor does Time Warner provide a legal basis for its complaint. Section 271 does not require incumbents to create a special dispute process for each possible category of potential future disagreements.

d) IURC Review – Checklist Item 4

424. We examine a number of different matters, as highlighted below, in order to assess SBC Indiana's compliance with Checklist Item 4.

425. At the outset, we would note, the Company's provisioning of voice-grade loops is uncontested. It further appears to satisfy its subloop unbundling obligations.

1) Line Splitting

426. Line splitting is complicated by the differences between federal and state law with respect to the obligations that govern in the various types of arrangements. Also, it is equally complicated by the less than clear arguments and positions set out by the parties in this proceeding. In order to lend some clarity, we begin our analysis with a summary of the relevant federal and state orders.

Relevant FCC Orders

The Line Sharing Order

427. Pursuant to the FCC's Line Sharing Order, an ILEC must: (1) provide unbundled access to the high frequency portion of the loop (HFPL) so that carriers may use those frequencies to provide xDSL-based services; and (2) provide access to OSS necessary to support non-discriminatory pre-ordering, ordering, provisioning, maintenance and testing, and billing for CLECs. The Line Sharing Order specifically discusses line sharing over the copper portion of the local loop, from the customer premises to the ILEC central office. It does not discuss line sharing over fiber-fed DLC systems. This order, however, does not preclude or restrict deployment of other technologically feasible methods of line sharing.

The UNE Remand Order

428. The unbundling requirements set forth in the UNE Remand Order, pursuant to § 251 of the Act, are "designed to create incentives for both incumbent and competitive LECs to innovate and invest in technologies and services that will benefit consumers through increased choices of telecommunications services and lower

prices.” More specifically, the FCC sought to establish unbundling rules “to facilitate the rapid and efficient deployment of all telecommunications services, including advanced services.”

429. Under the FCC’s UNE Remand Order, the ILECs are obligated to provide non-discriminatory access to UNEs and OSS. Here, the FCC expressly stated that the ILEC obligation to provide access to OSS for xDSL-based services “falls squarely within an incumbent LEC’s duty” under the Telecommunications Act of 1996.

Line Sharing Reconsideration Order

430. On January 19, 2001, the FCC released its Line Sharing Reconsideration Order, which modified the Line Sharing Order. Here, the FCC concluded that incumbent LECs must allow competing carriers to offer both voice and data service on a single unbundled loop and that incumbent LECs had an obligation to permit competing carriers to engage in line splitting using the UNE platform, where the competing carrier purchases the entire loop and provides its own splitter. In addition, LECs were required to make all necessary network modifications to facilitate line splitting, including providing non-discriminatory access to OSS necessary for preordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. The FCC concluded that incumbent LECs must perform central office work necessary to deliver unbundled loops and switching to a competing carrier’s physically or virtually collocated splitter that is part of a line splitting arrangement. Line Sharing Reconsideration Order ¶¶ 19-20. The FCC went on to note that issues closely associated with line splitting arrangements, including splitter ownership, would be addressed in future rulemakings. Line Sharing Reconsideration Order ¶ 13.

431. The FCC also encourages ILECs and CLECs to use the state collaborative process to: 1) develop single order process for CLECs to add xDSL service to an existing UNE-P voice customer line; 2) allow CLECs to forego loop qualification if xDSL service already provided on line; 3) allow CLECs to order loops for use in line splitting as a “non-designed” service; 4) use the same number of cross connections and the same length of tie pairs for line splitting and line sharing arrangements. Line Sharing Reconsideration Order ¶ 21. The FCC states: “Because line splitting is an existing legal obligation, incumbent LECs must allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place.” It further indicates that, “[W]e expect Bell Operating Companies to demonstrate, in the context of 271 applications, that they permit line splitting, by providing access to network elements necessary for competing carriers to provide line splitting services.” Line Sharing Reconsideration Order ¶ 20 fn 36.

432. Because no central office wiring changes are necessary in a conversion from line sharing to line splitting, the FCC expects ILECs to work with CLECs to develop streamlined ordering processes for migrating from line sharing to line splitting that avoid service disruption and made use of the existing DSL capable loop. Line Sharing Reconsideration Order at para. 22. The IURC is unaware of SBC’s commitments for converting line sharing to line splitting other than the SBC reference in paragraph 458

that SBC Indiana has a streamlined process in place. The ILECs Data Affiliate is not required to provide DSL service on a line where the CLEC provides voice service. Line Sharing Reconsideration Order at para. 26.

Section 271 Orders

433. On June 30, 2000, in the Texas 271 Order, the FCC discussed some policies with regard to line sharing and line splitting. The FCC did not require SWBT to “prove that it has implemented the loop facility and OSS modifications necessary to accommodate requests for access to the line sharing unbundled network element as required by [the FCC’s] December 9, 1999 Line Sharing Order, ¶ 33. While the Line Sharing Order technically became effective on February 9, 2000, the FCC acknowledged that it could take as long as 180 days from release of its order for incumbent LECs to develop and deploy the modifications necessary to implement the new obligations. The FCC also found that an incumbent LEC has an obligation to permit CLECs to engage in “line splitting” over UNE-P where the CLEC provides its own splitter.

434. The FCC further rejected the argument that an incumbent LEC had an obligation to provide the splitter. The FCC reiterated this finding in its Line Sharing Reconsideration Order; the Louisiana & Georgia 271 Order; and in the Missouri and Arkansas 271 Order. The FCC also rejected the argument that the ILEC be required to provide xDSL service to customers who choose a voice service provider other than the ILEC. This decision is repeated in the Louisiana & Georgia 271 Order; and also in the individual Section 271 orders for the states of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.

IURC Decisions

435. The April 18, 2001 *AT&T Ameritech Arbitration Order* in Cause 40571-INT03 found that a splitter is considered ancillary equipment that allows access to the HFPL functionality and that a splitter shall be provided as ancillary equipment when requested to allow AT&T to access HFPLs. Our 2/17/03 Order in Cause No. 40611 S1 Phase 2 confirmed that SBC Indiana is obligated to provide CLECs ILEC-owned splitters in line splitting arrangements. We also held that SBC Indiana must provide line splitting over UNE-P. It must do so via an efficient, forward-looking, single-order process, the progress of which we will monitor in this proceeding.

Court Review – the USTA v. FCC Opinion

436. In the Line Sharing Order, the FCC determined that the high frequency portion of the cooper loop (“HFPL”) is a network element that ILECs must provide on an unbundled basis to CLECs that wish to provide digital subscriber line (“DSL”) service to their end users for high speed internet access. USTA, at 421.

437. The Court found the FCC’s analysis deficient because it “completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite)”. USTA at 428. The Court inferred from the FCC’s brief that

the FCC had focused solely on DSL providers because Section 251(d)(2)(B) of the Act defines UNEs in terms of services that a CLEC “seeks to offer” – and CLECs seek to offer DSL when they request line sharing. The Court rejected this position as “quite unreasonable” because the “unbundling is not an unqualified good.” The Court found that the Commission must “apply some limiting standard, rationally related to the goals of the Act” and “cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent’s network”. The Court also observed that such “naked disregard of the competitive context” would allow the FCC to inflict costs on the economy under conditions “where it had no reason to think doing so would bring on a significant enhancement of competition”. USTA at 429.

438. The Court thus vacated and remanded the Line Sharing Order stating that a future “order unbundling the high frequency portion of the loop should not be tainted by the sort of errors” that had been identified in the UNE Remand Order. USTA at 429. It rejected the ILECs’ claim that “a portion of the spectrum of the loop cannot qualify as a ‘network element.’” USTA at 429.

439. On September 4, 2002, the Court denied Petitions for Rehearing and rehearing *en banc*, but stated that “[t]he vacatur of the Commission’s orders is hereby stayed until January 2, 2003”. See USTA v. FCC, Order, Nos. 00-1012 and 00-1015 (D.C. Cir. 2002). The FCC then sought and received an extension of the stay through February 20, 2003, in order to “complete its actions on remand” and establish a “new regime.” The FCC voted to issue new rules on February 20, 2003, and the Court’s mandate issued on February 27, 2003. To date, the text of the FCC’s Triennial Review Order has not yet been issued.

Discussion

440. The standard of review requires SBC Indiana to demonstrate that it has a legal obligation to provide line splitting through rates, terms and conditions in interconnection agreements. In order to show compliance with the terms and conditions portions of its obligation, SBC Indiana refers to the fact that it provides the same terms and conditions approved by the FCC in SBC’s 271 applications in Texas, Kansas, Oklahoma, Arkansas, and Missouri.

441. The FCC did not require SBC Indiana’s data affiliate to continue to provide data service once voice service was switched from SBC Indiana to a CLEC. California 271 Order, ¶ 133. We do not have sufficient evidence of record that this issue should bar support for SBC Indiana’s 271 application. We remain concerned about CLEC allegations that SBC Indiana has refused to migrate voice customers when a line-sharing arrangement is in place and this may warrant a closer review by this Commission as we previously noted in the 2/17/03 Order in Cause No. 40611-S1 Phase 2. Similarly, we note that an ILEC-provided splitter is not an obligation that the FCC has required from RBOCs to demonstrate checklist compliance. While we note SBC Indiana’s commitment to provide splitters, we do not find it necessary that SBC Indiana demonstrate such compliance for 271 purposes. Having said that, the IURC has no first-hand knowledge of how effective the SBC Change Management Forums and CLEC

Users Forums have been in the past, how SBC has prioritized issues, or how responsive, generally, SBC has been. Thus, we cannot comment on the likely efficacy, adequacy, or timeliness of SBC Indiana's suggestion, above, that this issue be referred to one of these two forums. We ask the FCC's assistance in ensuring that this issue be resolved with SBC taking the necessary steps to ensure that the availability of line splitting, as SBC defines it (one CLEC provides both voice and data, or separate CLEC and DLEC use the same line. The key characteristic is that SBC Indiana is no longer the voice provider, is not preconditioned on SBC Indiana remaining the voice provider and to ensure the timely availability of a one-order process to migrate SBC Indiana's SLEC customers from line sharing to line splitting.

442. Based on the record, we find that SBC Indiana has successfully made the showings required. We note the fact that SBC Indiana uses the same line sharing/line splitting processes used in California which were reviewed by the FCC in the California 271 Order and were found to comply with Section 271 requirements. We rely on the fact that these procedures, to this extent, have already received FCC 271 approval. Against this backdrop, we now turn to a consideration of each scenario.

443. With respect to the UNE-P to Line Splitting and Line Sharing to UNE-P Scenarios, we find that SBC Indiana has demonstrated that it has in place an operational process for the conversion of UNE-P to line splitting and that it administers that process in a nondiscriminatory manner. Moreover, we note that SBC Indiana has in place a workable single order process for the UNE-P to line splitting scenario and find that SBC Indiana should submit this issue to the Change Management Forum in accordance with the FCC mandate as soon as feasible.

444. We agree with SBC Indiana that there is no present legal obligation for it to provide two distinct arrangements – line sharing and line splitting – in parity with one another. This is a proceeding to access the Company's compliance with existing FCC obligations. For these reasons, we decline to require anything further of the Company on this issue. Nonetheless, we note in the section above that the Company has proposed tariff language that would establish some degree of comparability between the Company's provisioning of the UNEs necessary to support a line splitting arrangement on the one hand, and the Company's provisioning of HPFL necessary to share a line sharing arrangement, on the other hand. While this proposal is not necessary to establish the Company's compliance with Checklist Item 4, we see the benefit in the Company's proposal and we hereby direct the Company to file this tariff modification within 30 days of the date of this Final Report and Recommendation. As neither the IURC nor the IURC staff has seen SBC Indiana's tariff proposal, this directive should not be construed as "pre-approval" of that proposal. Following a review of the tariff proposal, a decision will be made whether to approve it, with or without modifications.

Pricing for Line Splitting

445. SBC Indiana does not provide a single price for certain aspects of line splitting in its revised line sharing and line splitting compliance plan in its August 1, 2003, revised price list filing in this Cause, with references to certain existing tariff

sections, along with the following note, "Tariffed rates are provided for illustrative purposes; rates in a CLEC's interconnection agreement would control." Further, the line splitting prices in the attachment are based upon the contention that line splitting is a service, and not a UNE per se, such that a CLEC need only order the underlying network elements at established prices. We take administrative notice of the price list. We see no FCC requirement to be controlling on the matter and find specific CLEC concerns are properly addressed in Cause No. 40611 S1 Phase 2 where the parties have engaged in a process for Comments on pricing and tariffs to implement the Commission's orders. We may elect to act on SBC Indiana's revised line sharing and line splitting plan at a later date. We are also monitoring both the SBC Michigan Section 271 proceeding and the SBC four-state Section 271 filing for commitments that SBC has made, and perhaps will make regarding line sharing and line splitting. We may ask the FCC's assistance in ensuring that some or all of those commitments are applicable to SBC Indiana, and in enforcing some or all of those commitments. Finally, from time to time, we may examine certain line sharing or line splitting issues in Cause No. 40611-S1 or elsewhere.

2) Project Pronto

446. The mostly policy-type arguments that AT&T presents here either were or should have been provided in these earlier proceedings. Such matters are not open to dispute, or action, in this instance. It is only SBC Indiana's compliance with this authority that concerns the Commission in this proceeding.

447. In any event, the IURC previously addressed Project Pronto in Cause No. 40611-S1, Phase II. (The portion of the Phase II Order that deals with Project Pronto has now been stayed, pending the IURC's review of the forthcoming FCC Triennial Review Order.³⁶). There are currently no IURC-mandated requirements in place regarding the unbundling of Project Pronto. AT&T presented no evidence of any requirements for the unbundling of Project Pronto under Section 271.

3) Dark Fiber

448. The Commission rejects Time Warner's attempt to expand the definition of dark fiber, and its efforts to impose new processes for information requests, as beyond the scope of the competitive checklist and of this proceeding.

4) Overall Assessment

449. Based upon the record before us, and subject to our discussion of line sharing and line splitting above, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 4. The non-discrimination and "meaningful opportunity to compete" requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with the IURC will be discussed later.

³⁶ IURC Cause No. 40611-S1 (Phase II), Docket Entry (March 25, 2003).

5. CHECKLIST ITEM 5 - Unbundled Local Transport

a) Description

450. Section 271(c)(2)(B)(v) of the competitive checklist requires a Section 271 applicant to provide:

“[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.” 47 U.S.C. § 271 (c)(2)(B)(v).

b) Standards for Review

451. Transport facilities are the trunks that connect different switches within the BOC's network, or that connect those switches with long distance carrier's facilities. BOCs are required to provide competitors with the transmission links on an unbundled basis that are dedicated to the use of that competitor, as well as links that are shared with other carriers (including the BOC).

452. The FCC has required BOCs to provide both dedicated and shared transport to requesting carriers. Second BellSouth Louisiana Order at para. 201. Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.

453. Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.

(Section Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted)

c) The Evidence, Issues/Positions

1) SBC Indiana Position

454. SBC Indiana recognizes its Checklist Item 5 obligations to include the provisioning of both dedicated (used only by the CLEC) and shared, interoffice transport. Shared transport, SBC Indiana notes, consists of “transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.” 47 C.F.R. § 51.319(d)(1)(iii).

455. Shared transport, however, cannot be provided separately from unbundled local switching SBC Indiana explains, because in order for a CLEC to share the same transmission facilities that SBC Indiana uses for its own traffic, the CLEC's traffic must be routed by an SBC Indiana switch. See UNE Remand Order, ¶ 371. Accordingly, SBC

Indiana asserts, it provides shared transport through the product known as “unbundled local switching with shared transport,” or “ULS-ST” and, it reports, CLECs can obtain ULS-ST via interconnection agreements. (SBC 9/26/02 Alexander Aff. ¶¶80, 84; SBC 9/26/02 Deere Aff. ¶ 157.)

456. SBC Indiana witnesses Alexander and Deere presented testimony on the Company’s compliance with Checklist Item 5. There is no real dispute with regard to dedicated transport, SBC Indiana contends.

2) WorldCom Position

457. WorldCom contends that SBC Indiana has failed to comply with its obligations to provide shared transport. WorldCom bases this assertion on a penalty imposed in October 2002 by the FCC against SBC Indiana for its failure to comply with the SBC/SBC Indiana merger conditions relating to the provision of shared transport for intraLATA toll service. WorldCom 12/11/02 Comments at 49. WorldCom argues that instead of sharing transport in these cases, as required by the merger conditions, SBC withheld and forced competitors to expend valuable time and resources to exercise their rights. Id. Therefore, WorldCom contends, SBC Indiana cannot be in compliance with this Checklist Item.

3) SBC Indiana Reply Position

458. SBC Indiana maintains that, in fact, it is in compliance with this Checklist Item. SBC Indiana argues that given that CLECs have obtained over 81,000 UNE Platforms in Indiana (SBC 1/08/03 Heritage Reply Aff. ¶32), and such platforms include unbundled shared transport as part of the ULS-ST product, there can be no dispute that SBC Indiana provides shared transport. In SBC Indiana’s view, WorldCom’s citation of the FCC’s penalty regarding SBC Indiana’s former restriction on the use of shared transport for intraLATA toll service does not bear on present checklist compliance. WorldCom Comments at 49. SBC Indiana points out that WorldCom itself acknowledges that the penalty does not purport to enforce any checklist requirement, but instead addresses compliance with a condition of merger approval. Id. WorldCom’s opener, that “[t]he issue regarding Checklist Item 5 is whether [SBC] Indiana has complied with its obligations...as part of the SBC/SBC Indiana merger conditions” is simply a non-sequiter. Id. According to SBC Indiana, the issue regarding Checklist Item 5 is whether SBC Indiana has complied with Checklist Item 5, and SBC Indiana asserts that it demonstrated such compliance in its opening filing. SBC Indiana emphasizes that WorldCom does not show or even allege that SBC Indiana is not providing shared transport for intraLATA toll at the present time. While SBC Indiana noted that at the time, the FCC’s decision on the merger condition was not yet final, it asserts that it, notwithstanding, does currently provide shared transport for intraLATA toll service. SBC 9/26/02 Alexander Aff. ¶84.

d) Commission Review and Conclusion

459. SBC Indiana acknowledges its federal obligations to provide both dedicated and shared transport to requesting CLECs. It provides shared transport through ULS-ST, available to CLECs via agreement. The Commission finds that SBC Indiana meets the “availability” requirements of checklist item 5, although we do raise a concern with regard to shared transport. The FCC has twice found that SBC violated Paragraph 56 of the Merger Conditions regarding the provision Shared Transport in all five of the old Ameritech States – specifically, because SBC Ameritech did not allow CLECs to carry intraLATA toll traffic over SBC’s shared transport facilities. The FCC imposed a forfeiture on SBC of \$6 million, accordingly³⁷. The FCC also ruled that two individual CLECs (Z-TEL and Core Communications, Inc.) can pursue additional damages against SBC.³⁸ The FCC previously ruled that the UNE Remand Order also requires SBC to allow CLECs to carry intraLATA toll traffic over SBC’s shared transport facilities.³⁹ We are unaware of any evidence that SBC Indiana continues to prohibit CLECs from carrying intraLATA toll traffic over SBC’s shared transport facilities. However, because of the critical nature of this issue, as evidenced by the FCC’s prior orders, we request the FCC’s assistance in monitoring the extent and level of access to SBC’s shared transport facilities for intraLATA traffic and in enforcing the FCC’s prior orders on this issue.

e) Overall Assessment

460. On the whole, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 5. The non-discrimination and “meaningful opportunity to compete” requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with the IURC will be discussed later.

6. CHECKLIST ITEM 6 – Unbundled Local Switching

a) Description

464. Section 271(c)(2)(B)(vi) of the 1996 Act requires that a 271 Applicant provide:

“[l]ocal switching unbundled from transport, local loop transmission, or other services.” 47 U.S.C. § 271(c)(2)(B)(vi).

³⁷ In re: SBC Communications, Inc., Apparent Liability for Forfeiture, File No. EB-01-IH-0030, Notice of Apparent Liability for Forfeiture, FCC 02-7, Ordering Clause No. 23 (rel. Jan. 18, 2002).

³⁸ File No. EB-01-01-MD-017 ...

³⁹ In re: SBC Communications, Inc., Apparent Liability for Forfeiture, File No. EB-01-IH-0030, Notice of Apparent Liability for Forfeiture, FCC 02-7, Paras. 17, 18 (rel. Jan. 18, 2002).

b) Standards for Review

462. A switch connects end user lines to other end user lines. It also connects end user lines to trunks used for transporting a call to another central office or to a long distance carrier. Switches can also provide end users with “vertical features” such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk – such as to a competing carrier’s operator services.

461. In the Second Louisiana 271 Order, the FCC required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. It described the features, functions, and capabilities of the switch to include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC’s customers. Additionally, according to the FCC, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.

462. Further, in this same Order, the FCC required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic. The FCC also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information. Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching. As such, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.

463. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC’s switch, as necessary to provide access to shared transport functionality. In addition, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier’s point of presence to a dedicated trunk port on the local switch.

(Section Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

c) Evidence, Issues/Positions

1) SBC Indiana Position

464. “Local switching”, SBC Indiana maintains, describes the basic function that switches perform in connecting end user lines to each other and to “trunks,” which are used to transport a call to another central office or to a long-distance carrier. See New Jersey 271 Order at C-28, n.764. In addition to the basic switching function, unbundled local switching includes both line-side and trunk-side facilities, and all the

"features, functions, and capabilities of the switch . . . that are available to the incumbent LEC's customers." Id. at C-28, ¶ 54. These features and functions include "all vertical features that the switch is capable of providing," such as call waiting and call forwarding, "as well as technically feasible customized routing functions," where a switch directs a call to a specific trunk. Id.

465. SBC Indiana asserts that it satisfies Checklist Item 6 by offering - pursuant to binding interconnection agreements - unbundled local switching that includes all the features and functions resident in the switch. (SBC 9/26/02 Alexander Aff. ¶¶88; SBC 9/26/02 Deere Aff. ¶¶173-75.) Its witnesses Deere and Alexander testified as to SBC Indiana's compliance.

Customized Routing

466. "Customized routing," SBC Indiana explains, permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching, provided by the incumbent, which will carry certain classes of traffic originating from requesting carrier's customers. Second Louisiana 271 Order, ¶ 221. When a CLEC is using SBC Indiana's unbundled local switching or unbundled local switching with shared transport, and its end user makes an operator service ("OS") or directory assistance ("DA") call, SBC Indiana's end office switch must recognize and route the call based on the CLEC's routing instructions. According to SBC Indiana, the CLEC may choose one of two routes for these OS/DA calls. (SBC 9/26/03 Deere Aff. ¶183.) It may choose to have the end office route the OS or DA call to SBC Indiana's OS/DA platform or to the platform of a third-party OS/DA provider. (Id. ¶¶183-84.) Alternatively, SBC Indiana notes, the CLEC may use custom routing to route the call to a dedicated trunk group that will transport the call to the CLEC's own OS or DA platform. (Id.)

467. SBC Indiana contends that it provides two methods by which CLECs using unbundled local switching may have OS/DA calls custom routed according to their own specifications: through the Advanced Intelligent Network ("AIN") and through Line Class Codes. (SBC 9/26/03 Deere Aff. ¶183.) In a few low-volume applications where AIN is not technically feasible (such as certain coin services), SBC Indiana indicates that it uses line class codes to custom route CLEC calls. (Id. ¶184.) It further notes that CLECs may also request non-AIN custom routing for OS/DA through the BFR process. (Id. ¶186.) According to SBC Indiana, no party to this proceeding disputes that SBC Indiana offers custom routing through AIN and through Line Class Codes. The only issue is whether SBC Indiana provides a special form of custom routing, described by WorldCom as custom routing on Feature Group D ("FGD").

Access to RCF Features

468. Under the FCC's rules, SBC Indiana recognizes, ILECs are required to provide CLECs with access to all the features, functions and capabilities of the local switch, including vertical features resident in the switch.

2) WorldCom Issues/Position

469. WorldCom raises an issue with respect to customized routing, asserting that it has instructed SBC Indiana on how it wants its OS/DA calls routed to its own platform or to third party OS/DA platforms. WorldCom 12/11/02 Comments at 51-52. It contends that SBC Indiana has refused to implement WorldCom's preferred OS/DA customized routing method. Id.

470. According to the FCC, WorldCom maintains, a BOC must provide CLECs with technically feasible customized routing functions, so that the CLEC can designate the particular outgoing trunks that will carry certain classes of its customers' originating traffic. Texas 271 Order ¶¶339 n.946; Second Louisiana 271 Order ¶¶221; WorldCom 12/11/02 Comments at 51. Further, WorldCom asserts, the CLEC must tell the BOC how to route its customers' calls.

471. WorldCom's witness Caputo discussed SBC Indiana's failure to provide customized routing of OS/DA (Operator Services/Directory Assistance) calls placed by WorldCom's customers. (WorldCom 12/11/02 Comments at 51.) As he explained, WorldCom can provide OS/DA to its customers in one of two ways: (1) by purchasing it from SBC Indiana, or (2) by providing it itself. (WorldCom 12/11/02 Caputo Aff. ¶¶6.) Even if it were to choose the latter option, WorldCom asserts, it is still dependant upon SBC Indiana to route WorldCom's UNE-P customers' OS/DA calls to WorldCom's OS/DA facilities. (WorldCom 12/11/02 Comments at 51.) According to WorldCom, while it prefers this option (for the control it allows over WorldCom's OS/DA service offerings), SBC Indiana fails to provide the customized routing that is necessary to meet both WorldCom's business needs and FCC rules, even though it is technically feasible. (WorldCom 12/11/02 Caputo Aff. ¶¶¶ 7, 12-13.) Mr. Caputo, WorldCom claims, provided extensive evidence to show that WorldCom's preferred customized routing method is technically feasible. (Id. ¶¶13.) He further testified, WorldCom notes, that SBC Indiana has been on notice for years as to how WorldCom prefers to have its OS/DA traffic routed. (Id. ¶¶¶ 12, 17, 25.)

472. Due to SBC Indiana's failure to provide compliant customized routing, WorldCom argues, it must continue to provide OS/DA as UNEs – at TELRIC-based prices – until it complies with its customized routing obligations. (WorldCom 12/11/02 Caputo Aff. ¶¶18; WorldCom 12/11/02 Comments at 52.) WorldCom asks that the Commission ensure that SBC Indiana satisfies this legal obligation until such time as it successfully implements WorldCom's requested mode of customized OS/DA routing. Id.

3) Z-Tel Issues/Position

473. According to Z-Tel, SBC Indiana fails to provide a certain switching functionality to CLECs, known as Remote Call Forwarding ("RCF"). (Z-Tel 12/11/02 Comments at 8.) RCF, it explains, is a service often subscribed to by small business customers, which allows the customer to keep its phone number when changing physical locations. (Id.) Z-Tel contends that when it places a UNE-P order to migrate a

customer's service, SBC Indiana refuses to migrate the remote call forwarding function with the order. (Id.) As a result, Z-Tel contends, the end user customer is required to change phone numbers in order to have Z-Tel as the local service provider. (Id.) Naturally, Z-Tel observes, this imposes a significant burden and cost on the customer, e.g., new business cards, yellow page listings, etc., and is a major impediment to competing in this market segment. (Id.) Although SBC Indiana has committed to providing this functionality at some point, Z-Tel notes, it has not yet done so. (Id.)

4) AT&T Issues/Position

Privacy Manager

474. AT&T notes that, under the UNE Remand Order, SBC Indiana must either provide AT&T access to SBC Indiana's AIN features, including Privacy Manager, or provide non-discriminatory access to its Service Creation Environment in order for AT&T to design, create, test and deploy its own Privacy Manager feature. AT&T 12/11/02 Comments at 24. AT&T asserts that SBC Indiana currently refuses to do either. Id. Instead, AT&T asserts, SBC Indiana allegedly uses Privacy Manager as a win back tool to AT&T's competitive disadvantage. Id.

5) SBC Indiana Reply Position

Customized Routing

475. It is uncontested, the Company asserts, that SBC Indiana offers two versions of custom routing that CLECs like WorldCom can use to route UNE-P calls to their own operator services and directory assistance platform. SBC Indiana demonstrated (and WorldCom has not contested) that WorldCom has yet to make a Bona Fide Request for its desired *new* version of custom routing for Feature Group D, or to compensate SBC Indiana for the cost of development as required by the FCC. (SBC 1/8/03 Deere Reply Aff. ¶ 55.) The development of such a specialized routing capability would be an expensive undertaking, and the FCC has ruled that incumbents need not follow a CLEC's instructions without compensation. Second Louisiana 271 Order, ¶ 221. In SBC Indiana's view, WorldCom wants SBC Indiana to develop and test an application without any advance payment and without any promise on WorldCom's part that it will purchase the capability so that SBC Indiana can recover these costs. (SBC 1/8/03 Deere Reply Aff. ¶ 59.) Not only is this position contrary to the Second Louisiana 271 Order, SBC Indiana asserts, it is commercially unreasonable.

476. WorldCom's argument on technical feasibility is equally deficient, SBC Indiana maintains. By WorldCom's own admission, custom routing over Feature Group D is not technically feasible in the Nortel switch, which accounts for 45% of all SBC Indiana switches. (SBC 1/8/03 Deere Reply Aff. ¶ 61.) That leaves WorldCom to claim that Nortel *could* develop this capability in the future. (Id.) Unless and until Nortel does so, SBC Indiana asserts, custom routing over Feature Group D remains technically infeasible in almost half of SBC Indiana's switches.

477. WorldCom's witness claimed that it has conducted successful laboratory tests of custom routing over Feature Group D, but SBC believes he contradicted that assertion when he admitted that there are technical problems in the Nortel switch. (WorldCom 12/11/02 Caputo Aff. ¶ 13; SBC 1/8/03 Deere Reply Aff. ¶ 61.) SBC offered to put those assertions to the test under live, real-world conditions in California, but claims that WorldCom refused to pay the costs of the developing and deploying that capability. (SBC 1/8/03 Deere Reply Aff. ¶¶ 63-69.)

Access to RCF Features

478. SBC Indiana notes that Z-Tel alleges that when it places a UNE-P order to migrate a customer's service, "SBC Indiana refuses to migrate the remote call forwarding function with the order," so the end user must obtain a new telephone number. (Z-Tel Comments at 8.) But, SBC Indiana responds, RCF is not a feature of the switch port providing dial tone to the end user, so it does not automatically "migrate" when a CLEC assumes a customer using UNE-P. (SBC 1/8/03 Alexander Reply Aff. ¶ 29.) SBC Indiana indicates that the RCF service functionality is currently technically incompatible with the AIN-based systems used in recording usage for Unbundled Local Switching with Shared Transport. (*Id.*) SBC informed that it is currently discussing a work-around with Z-Tel to provide similar functionality in the near term. (*Id.*) SBC indicates that CLECs may still request RCF functionality for unbundled local switching ports via the BFR process. (*Id.*)

Privacy Manager

479. SBC Indiana asserts that AT&T's claim about access to software services based on SBC Indiana's Advanced Intelligent Network ("AIN"), such as SBC Indiana Privacy Manager (SM) is unfounded. To the extent AT&T really wants SBC Indiana to unbundle Privacy Manager as a UNE, that claim has already been rejected by the very UNE Remand Order on which AT&T relies, in which the FCC held that incumbents need not unbundle Privacy Manager service, a proprietary AIN service. UNE Remand Order, ¶ 409. To the extent that AT&T wants access to SBC Indiana's Service Creation Environment to design its own AIN-based offerings, SBC Indiana asserts that it does not "refuse" CLEC requests, but instead has developed a new CLEC Guide explaining the methods and procedures applicable to SCE access. (SBC 1/8/03 Alexander Reply Aff. ¶ 26; SBC 1/8/03 Deere Reply Aff. ¶ 111-17.) Additionally, SBC Indiana informed that it has made its technical representatives available to AT&T for discussions on this topic. (SBC 1/8/03 Alexander Reply Aff. ¶ 26; SBC 1/8/03 Deere Reply Aff. ¶ 118.)

d) Commission Review and Conclusion

Customized Routing

480. With regard to WorldCom's custom routing complaint, it is unclear to us whether, and to what extent, WorldCom has followed through with a request for the specific form(s) of custom routing it desires. It is also unclear whether, and to what extent, WorldCom is willing to compensate SBC Indiana for the task.

481. Finally, it is unclear whether, and to what extent, WorldCom's specific request for customized routing is technically feasible. For the reasons noted above, and based upon current information, we are not persuaded by WorldCom's arguments and the Commission requires nothing further of the Company on this issue in this proceeding.

Access to RCF

482. Based on Mr. Alexander's testimony, SBC Indiana has raised relevant distinctions between RCF and conventional port-based switch features. (SBC 1/8/03 Alexander Reply Aff. ¶ 29) Further, Z-Tel has pointed to no FCC order that specifically addresses RCF. SBC Indiana has asserted that it is working with Z-Tel to facilitate its availability as part of a UNE-P offering. Based on the information provided by the parties, the Commission is unaware of any checklist compliance issues and will not attempt to resolve in this proceeding the issue whether RCF should be considered a feature required as part of ULS-ST.

Privacy Manager

483. AT&T's claim that SBC Indiana is obligated to provide access to SBC Indiana's AIN features, including Privacy Manager, is unsupported. This claim was denied by the UNE Remand Order, in which the FCC held that ILECs need not provide such access to this proprietary AIN service. Further, SBC Indiana has developed acceptable methods and procedures for CLEC access to their Service Creation Environment.

1) Overall Assessment

484. On the whole, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 6. The non-discrimination and "meaningful opportunity to compete" requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

7. CHECKLIST ITEM 7 – 911/E911 Access and Directory Assistance – Operator Services

a) Description of Checklist Item

485. Section 271(c)(2)(B)(vii) of the Act, requires that a 271 Applicant provide nondiscriminatory access to:

- (I) 911 and E911 services;
- (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

- (III) operator call completion services. 47 U.S.C. Section 271 (c)(2)(B)(vii).

b) Standards for Review

486. The 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

487. The FCC found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity." Michigan 271 Order, ¶ 256.

488. Specifically, a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers." *Id.* For facilities-based carriers, the BOC must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself." *Id.*

489. The provisions of Section 271(c)(2)(B)(vii)(II) and (III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively. Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays." 47 U.S.C. Sec. 251 (b)(3). In the Second Louisiana 271 Order, the FCC concluded that a BOC must be in compliance with the regulations implementing section 251(b)(3) in order to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and (III).

490. In the Local Competition Second Report and Order, the FCC interpreted the phrase "nondiscriminatory access to directory assistance and directory listings" to mean that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."

491. The FCC concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.

492. The FCC specifically held that the phrase "nondiscriminatory access to operator services" means that "a telephone service customer, regardless of the identity

of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."

493. Competing carriers may provide operator services and directory assistance by:

1. reselling the BOC's services,
2. outsourcing service provision to a third-party provider, or
3. using their own personnel and facilities.

494. The FCC rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls. Competing carriers wishing to provide operator services or directory assistance using their own or a third party provider's facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per query" basis from the BOC's directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database.

495. Although the FCC originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the FCC removed directory assistance and operator services from the list of required UNEs in the UNE Remand Order.

496. Checklist item obligations that do not fall within a BOC's obligations under section 251(c)(3) are not subject to the requirements of sections 251 and 252 that rates be based on forward-looking economic costs. Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.

(Adapted from the New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

Operator Services and Directory Assistance (OS/DA)

497. The UNE Remand Order found that Incumbent LECs are not required to unbundle their OS/DA services pursuant to section 251(c)(3), except in the limited circumstance where an incumbent LEC does not provide customized routing to a requesting carrier to allow it to route traffic to alternative OS/DA providers. (Third Report and Order and Forth Further Notice of Proposed Rulemaking, In the Matter of Implementing of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, (Released November 24, 1999), 15 F.C.C. Rcd. 3696 ¶¶ 441-442). Operator services are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers. Incumbent

LECs, however, remain obligated under the non-discrimination requirements of section 251(b)(3) to comply with the reasonable request of a carrier that purchases the incumbents' OS/DA services to brand those services, and to provide directory assistance listings and updates in daily electronic batch files. In its Order for Cause No. 40611 the Commission required SBC Indiana to provide OS/DA at TELRIC prices until SBC Indiana demonstrated that it could route OS/DA calls to CLEC networks.

c) Evidence, Issues/Positions

1) SBC Indiana Position

911 and E911 Services

498. In its Michigan 271 Order (¶ 256), SBC Indiana observes, the FCC elaborated that a BOC must ensure that resellers can provide 911 Service to their end users in the same manner as SBC Indiana. Meanwhile, for facilities-based carriers, SBC Indiana must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what SBC Indiana provides to itself." Id. Moreover, SBC Indiana "must maintain the 9-1-1 database entries for competing LECs with the same accuracy and reliability that it maintains the database for its own customers." Id. SBC's responsibility is to process CLEC updates to the E911 database and perform error correction for competitors on a nondiscriminatory basis. Id. ¶ 256. The testimony of SBC Indiana witnesses Valentine and Nations addresses compliance with Checklist Item 7.

499. According to SBC Indiana, 911 Service is provided to private and Public Safety Agencies by interconnection agreements, Appendix 9-1-1, and its tariff Indiana Utility Regulatory Commission (IURC) Tariff 20 Part 23, Section 3. (SBC 9/26/02 Valentine Aff. ¶¶ 5,7.) It enables a caller to reach a Public Safety Answering Point ("PSAP") by dialing the familiar digits 9-1-1. (Id.)

500. Enhanced 911 Service, SBC Indiana explains, uses a switch to route 911 calls to a particular PSAP designated by the Public Safety Agency based on the end user's telephone number. (SBC 9/26/02 Valentine Aff. ¶ 7.) The E911 system, as described by SBC Indiana, includes the Automatic Number Identification ("ANI") Control Equipment, the Automatic Location Identification ("ALI") multiplexer, and other station equipment, which are located at the PSAP premises. Id. (Attachment A to SBC 9/26/02 Valentine Aff. shows a diagram of the E911 system). The Public Safety Agencies determine whether the PSAPs will receive the ANI (telephone number) and ALI (name and address) with the 911 call. (Id.)

501. SBC Indiana informs that when an end user dials 9-1-1, the end-user's serving central office sends the call to the 911 Control Office, which then uses the end-user's telephone number (identified by the ANI) to query a routing database known as the Selective Routing/Automatic Location Identification database or "SR/ALI" to determine which PSAP should receive the call. (SBC 9/26/02 Valentine Aff. ¶ 9.) The

SR/ALI database, it explains, stores end-user data such as name, address, telephone number, and class of service, which are provided and updated by each carrier, including SBC Indiana, CLECs and other ILECs. (Id.) In addition, SBC Indiana has a Master Street Address Guide ("MSAG"), which contains street information with address ranges and routing information for the responding Public Safety Agencies. (Id. ¶ 10.) This information is provided to SBC Indiana by the county 911 coordinator(s). (Id.)

502. No party to this proceeding, SBC Indiana asserts, challenges the evidence showing that SBC Indiana complies with its obligations to provide CLECs with nondiscriminatory access to 911 and E911 Services. Therefore, and on the basis of the following showing, it contends the Commission should find that SBC Indiana has satisfied Checklist item 7(1).

503. First, according to SBC Indiana, resale CLECs can provide 911 and E911 Service to their customers in the same manner as SBC Indiana provides such services to its own customers. (SBC 9/26/02 Valentine Aff. ¶ 33.) End user records for resale customers are included in the same files that SBC Indiana uploads for its own customers. (Id.) If SBC Indiana's error file identifies an error for a resale customer record, SBC Indiana employees (or employees of SBC Indiana's 911 Database Services Provider, Intrado) will correct the errors that can be resolved by issuing a service order. (Id. ¶ 34.)

504. Second, SBC Indiana asserts that it provides facilities-based CLECs nondiscriminatory access to 911 and E911 service through dedicated trunks from their facilities to the 911 Control Office. (SBC 9/26/02 Valentine Aff. ¶ 17.) Dedicated 911 implementation managers facilitate CLEC interconnection and the testing and turn-up of a CLEC's 911 trunk(s) at the 911 Control Office. (Id.) Upon installation, SBC Indiana and the CLEC jointly conduct continuity testing to ensure that the trunks are functioning properly, using the same tests that SBC Indiana performs when it installs new 911 trunks from its own end offices to its 911 Control Offices. (Id.)

505. Third, SBC Indiana notes that it provides CLECs with access to the MSAG database containing the necessary street address information for the exchanges or communities in which the CLECs operate, so CLECs can create the necessary end user files for the ALI. (SBC 9/26/02 Valentine Aff. ¶ 20.) There is a single mechanized MSAG that is under the control of the 911 customer (the municipality) and used by all service providers interconnecting with the 911 systems provided by SBC Indiana. (Id. ¶ 21.) CLECs may view a copy of the MSAG electronically via a product called TCView, and can periodically obtain their own mechanized copy of the MSAG. (Id.)

506. SBC Indiana opines that it handles 911 updates in the same manner for CLECs as for itself. (SBC 9/26/02 Valentine Aff. ¶¶ 25, 28.) Each switch-based service provider is responsible for electronically uploading and maintaining the 911 database information for its own customers. (Id. ¶¶ 22, 26.) When files containing a CLEC's customer records are received, SBC Indiana's Transactions Service System ("TSS") validates the information against the MSAG. (Id. ¶ 11.) If the record matches a valid address in the MSAG, then the record will be input into the SR/ALI database, and

routing information will be added. (Id. ¶ 11.) If the record does not match a valid address in the MSAG, an error file is created, which may be sent to the PSAP or municipality for resolution. (Id.) In addition to the MSAG validation, the TSS performs a number of other edit checks on record updates to ensure database accuracy and completeness. (Id. ¶ 12.)

507. According to SBC Indiana, the CLEC receives a statistical report confirming the number of records processed and an error file with any records that failed the system edits. (SBC 9/26/02 Valentine Aff. ¶ 26.) The error file provides codes explaining the reason each record failed to process, and the CLEC is then responsible for correcting the record and resubmitting it. (Id.) Similarly, SBC Indiana provides CLECs with an electronic comparison file containing the 911 database information for the CLECs' customers served through the UNE switch ports. (Id. ¶ 28.) The CLEC uses this file to check accuracy and submit any necessary corrections to SBC Indiana. (Id.) SBC Indiana has taken numerous steps to maintain the accuracy of the 911 database. (Id. ¶ 12.) Further, SBC Indiana claims, CLEC errors are detected by SBC Indiana and its 911 Database Services Provider, Intrado (formerly SCC Communications Corporation), just as they are for SBC Indiana. (Id. ¶ 25.)

Directory Assistance/Operator Services (DA/OS)

508. Under Checklist Item 7, SBC Indiana recognizes that it is also required to provide or offer to provide CLECs with “nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier’s customers to obtain telephone numbers; and (III) operator call completion services.” The FCC has held that the phrase “nondiscriminatory access to . . . directory assistance services” means that “the customers of all telecommunications service providers should be able to access each LEC’s directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer’s local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.” Meanwhile, the FCC has held that “nondiscriminatory access to operator services” means that “a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing ‘0,’ or ‘0 plus’ the desired telephone number.” Second Report and Order, ¶ 112.

509. SBC Indiana maintains that it provides CLECs with nondiscriminatory access to Operator Services (“OS”) and Directory Assistance (“DA”) pursuant to legally binding agreements. (SBC 9/26/02 Nations Aff. ¶ 14.) More specifically, it provides OS, including Automated Call Assistance (which allows an end user to complete a call without the assistance of an operator); Manual Call Assistance (in which an end user dials “0” or “0” plus an area code and telephone number in order to place a collect, third number, calling card or “sent paid” call using an operator’s assistance); Busy Line Verification (“BLV”) (a service whereby a caller may request that an operator check an access line to determine if the line is busy or is “off the hook”), Busy Line Verification Interrupt (“BLVI”) (which allows the end user to request that the operator interrupt a conversation in progress to ask whether one of the parties is willing to speak to the

caller requesting the interrupt), and Operator Transfer Service (which allows a subscriber to request that an operator transfer a call to an interexchange carrier). (Id. ¶ 25.)

510. SBC Indiana further asserts that it provides CLEC subscribers with the same DA services as provided to SBC Indiana subscribers. (SBC 9/26/02 Nations Aff. ¶ 24.) According to SBC Indiana, DA services include local and national Directory Assistance, which provides a subscriber with listing information such as name, address and published telephone number – or an indication of “non-published” status – when a CLEC subscriber dials 411 or 555-1212 for the applicable area code. (Id.) Directory Assistance Call Completion, SBC Indiana explains, is a service that completes a local or intraLATA call to the requested number utilizing SBC Indiana’s automated voice system or operator assistance. (Id.)

511. SBC Indiana maintains that it provides CLECs with nondiscriminatory access to these and other wholesale OS and DA services via interconnection agreement provisions, and also under SBC’s Federal Access Tariff. (SBC 9/26/02 Nations Aff. ¶ 26.) It describes these services to include: Call Branding, which enables the CLEC to identify itself to its subscribers at the beginning of each OS/DA call handled on the CLEC’s behalf; Rate/Reference, which enables SBC Indiana’s operators to quote a CLEC’s retail OS rates to the CLEC’s subscribers upon request; and Inward Operator Service, which allows to telephone operators of CLECs that provide their own operator services (via their own switches or custom routing) to ask SBC Indiana’s Inward Operator personnel to check a line on SBC Indiana’s network. (Id.)

Directory Assistance Listings and Direct Access to DA Database

512. SBC Indiana asserts that it provides directory assistance listing information in bulk format with daily updates so that CLECs can provide their own DA services. (SBC 9/26/02 Nations Aff. ¶ 30.) Appendix DA and Appendix Resale of SBC Indiana’s interconnection agreements provides CLECs and their agents with access to all of the DA listings in SBC Indiana’s database. (Id. ¶ 29.) According to SBC Indiana, a CLEC can request DA listings on a statewide, geographic area, or class of service basis (business or residence or both) and receive the same listing information that SBC Indiana’s operators use to provide DA service. (Id. ¶ 30.) SBC Indiana further offers CLECs direct access to “query” the DA database. (Id. ¶ 31.)

2) WorldCom Issues/Position

Pricing for DA Listings

513. WorldCom contends that, consistent with FCC and Commission requirements, SBC Indiana must provide nondiscriminatory access to DA listings at cost-based rates. WorldCom 12/11/02 Lehmkuhl Aff. ¶ 5. WorldCom asserts SBC Indiana’s obligation is based on the fact that DA listings are UNEs under § 251(c)(3) of the TA96. Id. ¶ 6. Further, WorldCom asserts that, in the UNE Remand Order, the FCC seemed to classify DA listings as a call-based database, to which unbundled access

must also be offered. Id. ¶ 8. Ultimately, it is WorldCom's view that the market-based pricing for DAL is contrary to TA96, FCC requirements and is unjustified because SBC Indiana, WorldCom contends, has a "lock" on how the DAL data is generated in Indiana. Id. ¶ 17. For these reasons, it asserts SBC Indiana does not meet its obligations under Checklist Item 7.

3) SBC Indiana Reply Position

911 and E911 Services

514. There is no dispute that SBC Indiana satisfies Checklist Item 7(I) by providing nondiscriminatory access to 911 and Enhanced 911 ("E911") Services. See 47 U.S.C. 271(c)(2)(B)(vii)(I).

Directory Assistance/Operator Services

515. SBC Indiana has demonstrated that it provides CLECs with "nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services." See 47 U.S.C. 271(c)(2)(B)(vii).

Directory Assistance Listings and Direct Access to DA Database/Pricing for DA Listings

516. SBC Indiana acknowledges that the Commission's order in Cause No. 40611-SI directed it to provide DA listings at TELRIC-based rates, and states that it will comply with that order. For purposes of federal checklist compliance, however, SBC Indiana asserts that, contrary to WorldCom's arguments, it is not obligated under federal law to provide "bulk" DA listings at TELRIC-based rates. According to SBC Indiana, the FCC has expressly excluded DA listing updates from its unbundling requirements. (SBC 1/8/03 Nations Reply Aff. ¶ 5.) In the UNE Remand Order SBC Indiana contends, the FCC stated:

We decline to expand the definition of OS/DA, as proposed by some commenters, to include an affirmative obligation to rebrand OS/DA and to provide directory assistance listings updates in daily electronic batch files. We find such modifications unnecessary because, as mentioned above, these obligations already exist under section 251(b)(3), and the relevant rules promulgated thereunder. UNE Remand Order, ¶ 444.

517. Moreover, SBC Indiana notes that the FCC and six state commissions have approved 271 applications, even though SWBT offers DAL at market-based rates in those states through 271-compliant interconnection agreements. (SBC 1/8/03 Nations Reply Aff. ¶¶ 10, 12.) Indeed, SBC Indiana would note, WorldCom conceded in its Comments to the FCC (in the Triennial Review) that the UNE Remand Order does not designate DA listing as a UNE. Id. ¶ 6. WorldCom, it notes, resorts to claiming that the unbundling rules are irrelevant because "federal law requires 'just' 'reasonable' and

'non-discriminatory' pricing for DA and DAL regardless of whether or not directory assistance is required to be unbundled pursuant to Sections 251(c) and (d)." WorldCom 12/11/02 Lehmkuhl Aff. ¶ 10. If, however only TELRIC-based rates were "just," "reasonable," and "non-discriminatory," SBC Indiana contends there would be little need for the 1996 Act to differentiate between those network elements that must be "unbundled" (and thus offered at TELRIC-based rates) and those that do not fall under the unbundling requirements.

518. SBC Indiana contends that the TELRIC methodology was not developed to implement the requirements of "nondiscrimination" or "just and reasonable" rates, terms and conditions for all the wholesale products and services that appear throughout the 1996 Act. Rather, it asserts, TELRIC was developed solely to implement the specific language of section 252(d)(1) of the 1996 Act, which requires that rates for interconnection and certain network elements be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element." 47 U.S.C. § 252(d)(1) (emphasis added); See First Report and Order, ¶ 618-620.

519. Under Section 252(d)(1), SBC Indiana contends, cost-based rates apply only to the rates for interconnection under section 251(c)(2) and for unbundled network elements under section 251(c)(3). Sections 251(c)(2) and 251(c)(3) mirror that language, as they are the only provisions that require rates to be set in accordance with the requirements of section 252. By its plain terms, section 252(d)(1) does not apply to the requirements established in section 251(b), such as the requirement to provide DA listings downloads. Likewise, section 251(b) does not refer to the pricing requirements of section 252, SBC Indiana argues.

520. Finally, and contrary to WorldCom's claims, SBC Indiana asserts that the DA listings rate is on its face "just and reasonable." According to SBC Indiana, WorldCom buys DAL from SBC Indiana at about 3.3 cents per listing, but then sell its DA Service in some instances as high as \$2.49. (SBC 1/8/03 Nations Reply Aff. ¶ 7.)

d) Commission Review and Conclusion

521. Checklist Item 7, in part, requires SBC Indiana to provide nondiscriminatory access to 911 and E-911 services. There is no evidence on record suggesting that SBC Indiana is not in compliance with this requirement. Thus, it would be reasonable for the Commission to find that SBC Indiana satisfies this portion of Item 7.

522. Another element of Checklist Item 7 is the obligatory provisioning of non-discriminatory directory assistance services. SBC Indiana has established that it offers OS and DA at TELRIC-based rates. Further, WorldCom's bulk DA listing at TELRIC pricing issue was decided in our 2/17/03 Order in Cause No. 40611 S1 Phase 2 and we note that SBC Indiana has implemented the requirements of that Order.

1) Overall Assessment

523. Finally, Checklist Item 7 requires non-discriminatory access to operator services. SBC Indiana maintains that it satisfies this obligation pursuant to legally binding agreements and specifically details the components provided. (SBC 9/26/02 Nations Aff. ¶ 14.) While it cannot be said that market-based pricing is, *per se*, just and reasonable and compliant with Section 201 and 202, neither can it be said that the exclusive means of meeting the requirements of Sections 201 and 202 is through TELRIC-based pricing. Indeed, Sections 201 and 202 do not require TELRIC-based pricing. We have no persuasive evidence before us in this proceeding at this time that SBC Indiana has not met the requirements of Section 201 and 202. On the whole, therefore, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 7. The non-discrimination and “meaningful opportunity to compete” requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

8. CHECKLIST ITEM 8 – White Pages Directory Listings

a) Description of Checklist Item

524. Section 271(c)(2)(B)(viii) of the 1996 Act requires a 271 applicant to provide:

“[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.” 47 U.S.C. Section 271 (c)(2)(B)(viii).

b) Standards for Review

525. Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing. The FCC has determined that, “consistent with the Commission’s interpretation of ‘directory listing’ as used in this statute the term ‘white pages’ in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider.” Second BellSouth Louisiana Order, 13 FCC Rcd at 20748, para. 255. The FCC further concluded that the term “directory listing,” as used in this section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.

526. According to the Second BellSouth Louisiana Order, a BOC satisfies the requirements of Checklist Item 8 by demonstrating that it:

- (1) provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and

- (2) provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers. Id.

(Section Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

c) The Evidence, Issues/Positions

1) SBC Indiana Position

527. SBC Indiana recognizes that it is required to put listings for CLEC end users in its own white pages directories just as if they were SBC Indiana customers, such that end users of all carriers can locate each other without having to obtain or consult several separate directories.

528. The FCC defines a "directory listing" to include, "at a minimum, the subscriber's name, address, telephone number, or any combination thereof." Georgia & Louisiana 271 Order at D-31. To satisfy Checklist Item 8, a BOC must show that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for competitor's customers with the same accuracy and reliability that it provides its own customers. Id. at D-32. The FCC explained that in order to comply with the "nondiscriminatory appearance and integration" requirement, a BOC must offer a CLEC customer a listing that is "identical" (that is, in the same size, typeface, and font) to a BOC retail customer's listing, and that is not separately classified (or otherwise identified) from the BOC's own customers. Second Louisiana 271 Order, ¶ 256. To meet the "same accuracy and reliability" test, a BOC must have procedures in place "that are intended to minimize the potential for errors in the listings provisioned for the customers of competing LECs." Pennsylvania 271 Order, ¶ 115.

529. SBC Indiana asserts that it has demonstrated compliance with all of the above requirements. The "white pages", it explains, are published by an affiliate of SBC Indiana known as Ameritech Advertising Services or "AAS." (SBC 9/26/02 Kniffen-Rusu Aff. ¶ 1.) AAS integrates and publishes the primary listings of CLEC end users in the same directory (covering the relevant geographic area) as the listings of SBC Indiana's customers. (Id. ¶ 3.) Listings for all subscribers, whether served by a CLEC, SBC Indiana or independent telephone company, include the subscriber's name, address and telephone number. (Id.) CLEC end users may obtain a primary white pages listing in the same manner as SBC Indiana provides for its own retail customers. (Id. ¶¶ 5-6.) As of September 1, 2002, directories serving SBC Indiana customers contained over 175,000 listings of CLEC end users. (Id. ¶ 4.)

530. SBC Indiana maintains that it provides for the "nondiscriminatory appearance and integration" of CLEC customer listings. See Georgia & Louisiana 271 Order at D-32. The size, font, and typeface of CLEC customer listings are identical to those of SBC Indiana customer listings. (SBC 9/26/02 Kniffen-Rusu Aff. ¶ 4.) CLEC

customer listings are integrated alphabetically into all the other listings, and are not separately identified in any way. Id. Thus, SBC Indiana asserts, a reader cannot discern which listings belong to CLEC customers and which belong to SBC Indiana's customers. A CLEC may also include its own customer-contact information (for example, the CLEC's business office, residence office, and repair bureau telephone numbers) in SBC Indiana white pages on the same index-type informational page that lists SBC Indiana's contact information. (Id. ¶ 8.)

531. SBC Indiana further contends that it provides white pages listings to CLEC customers "with the same accuracy and reliability that it provides its own customers." Georgia & Louisiana 271 Order at D-32. CLECs can submit their listing orders to AAS itself (which offers an Electronic Data Interchange or "EDI" interface for that purpose) or via one of the two electronic OSS interfaces that SBC Indiana provides i.e., LEX or EDI. (SBC 9/26/02 Kniffen-Rusu Aff. ¶ 10.)

532. SBC Indiana explains that it provides CLECs with detailed instructions for the proper submission of white pages listings in its CLEC Handbook (<https://clec.sbc.com>) and by offering a variety of training workshops. (SBC 9/26/02 Kniffen-Rusu Aff. ¶ 9.) Other information regarding SBC Indiana's white pages listings and directories, including deadlines or "close dates" for submitting listings to be included in the published directory, is available in the CLEC Handbook. (Id. ¶ 12.)

533. According to SBC Indiana, it allows CLECs the opportunity to review their customers' listings for any errors before the white pages directory is published. CLECs have the option of receiving two verification review reports. The first is free, and is provided 45 calendar days before the "close date" for the directory. (SBC 9/26/02 Kniffen-Rusu Aff. ¶ 16.) SBC Indiana also provides the capability for CLECs to perform listing verifications via the EDI/CORBA and Enhanced Verigate operations support systems. (Id. ¶ 18.)

534. After submission and processing, SBC Indiana explains, the names, addresses, telephone numbers, directory listing format, and directory delivery information for both SBC Indiana and CLEC customers are contained in the same white pages database. (SBC 9/26/02 Kniffen-Rusu Aff. ¶ 14.) White pages directory listings for CLEC customers reach SBC Indiana's database in the same manner and within the same timeframe as do listings for SBC Indiana's own retail customers. (Id. ¶ 15.)

535. During the annual delivery of directories, the SBC Indiana white pages directory is delivered to each subscriber of CLEC resale and UNE-P services in the same manner and at the same time as SBC Indiana's retail subscribers. (SBC 9/26/02 Kniffen-Rusu Aff. ¶ 7.) Further, SBC Indiana has agreed to provide secondary delivery (between annual delivery dates) to subscribers of CLEC resale and UNE-P services on the same basis as SBC Indiana's own retail customers. Id. Finally, SBC Indiana contends, CLECs may request and negotiate arrangements with AAS for the delivery of white pages directories to their switched-based customers in the same manner and at the same time that the directories are delivered to SBC Indiana's retail customers. Id.

536. SBC Indiana explains that CLECs, who use an SBC Indiana switch to provide service have always been able to order a directory listing order at the same time they request local service (e.g., an order for resale, UNE-P, or unbundled local switching). That is the case because a service that uses an SBC Indiana switch automatically includes a directory listing. (SBC 9/26/02 Cottrell Aff. ¶¶ 126, 127.) Before June 2001, SBC Indiana notes, CLECs who used their own switches to provide service (e.g., a CLEC purchasing only an unbundled local loop from SBC Indiana) submitted their white pages listing orders directly to AAS, because these CLECs did not purchase anything from SBC Indiana that included a directory listing. Id. In June 2001, however, SBC Indiana implemented a single interface that allows a CLEC using its own switch to submit a directory listing order to SBC Indiana at the same time that the CLEC submits its unbundled loop order. Id. SBC Indiana then passes the directory listing order to AAS. Id.

d) Commission Review and Conclusion

1) Overall Assessment

537. No party disputes SBC Indiana's compliance with the requirements of Checklist Item 8. Further, SBC Indiana acknowledges its federal obligations to provide nondiscriminatory access to directory listing. On the whole, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 8. The non-discrimination and "meaningful opportunity to compete" requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

9. CHECKLIST ITEM 9 – Numbering Administration

a) Description of Checklist Item

538. Section 271(c)(2)(B)(ix) of the 1996 Act requires a 271 applicant to provide:

"nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering administration, guidelines, plan, or rules are established." 47 U.S.C. 271(c)(2)(B)(ix).

539. This checklist Item mandates compliance with "such guidelines, plan, or rules" after they have been established.

b) Standards for Review

540. A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules. See Second Bell South Louisiana

Order, 13 FCC Rcd at 20752; See also Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, CC Dockets 96-98; 99-200 (rel. Dec. 29, 2000); Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200 (rel. Dec. 28, 2001).

(Section Adapted from the New Jersey 271 Order with cites and footnotes omitted.)

c) Evidence, Issues/Positions

1) SBC Indiana Position

541. Number administration, SBC Indiana explains, refers to the assignment and administration of central office or “NXX” codes, which are depicted by the first three digits of a seven-digit telephone number (e.g., NXX-XXXX) (SBC 9/26/02 Smith Aff. ¶¶ 5-6.) Facilities-based carriers have NXX codes assigned to their switches in order to provide the associated telephone numbers to the end users served by those switches. (Id. ¶ 8.) A regional Central Office Code Administrator assigns SBC Indiana informs, these codes to carriers in accordance with FCC rules (such as, 47 C.F.R. 52.15) and industry numbering administration guidelines, i.e., the Central Office Code Assignment Guidelines and the NPA Code Relief Planning Guidelines. Id. Each NXX code contains 10,000 telephone numbers (NXX-0000 to NXX-9999), and telephone numbers are thus assigned to carriers in blocks of 10,000 numbers at a time. (Id. ¶¶ 7-8.) SBC Indiana witness Smith provided testimony of its compliance with Checklist Item 9.

542. SBC Indiana asserts that there is no dispute as to whether it has satisfied Checklist Item 9. Before the FCC’s Second Report and Order, SBC Indiana recalls, it served as the Code Administrator for the State. (SBC 9/26/02 Smith Aff. ¶ 9.) On November 17, 1999, SBC Indiana informs, NeuStar (formerly Lockheed Martin) assumed central office code administration responsibilities in Indiana (and since that time SBC Indiana has had no responsibility for number administration). Id. As such, SBC Indiana contends, March 29, 1999 is the “date [on] which telecommunications numbering administration guidelines, plan, or rules are established” under Section 271(c)(2)(B)(ix) of the 1996 Act. Rather than show that it provides nondiscriminatory access (because it is no longer responsible for providing access), SBC Indiana contends that it must show that it “adheres to the industry’s CO administration guidelines and Commission rules, including those sections requiring the accurate reporting of data to the CO code administration [NeuStar].” Second Louisiana 271 Order, ¶ 265.

543. SBC Indiana asserts that there is no dispute but that it adheres to all number administration industry guidelines and applicable rules. (SBC 9/26/02 Smith Aff. ¶ 9.) Further, SBC Indiana asserts that it complies with these guidelines and rules on the same basis as all other service providers. Id.

d) Commission Review and Conclusion

1) Overall Assessment

544. On the whole and based upon the record before us, and there being no dispute or showing to the contrary, on the whole, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 9. The non-discrimination and “meaningful opportunity to compete” requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

10. CHECKLIST ITEM 10 - Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion

a) Description of Checklist Item

545. Section 271(c)(2)(B)(x) of the 1996 Act requires a 271 applicant to provide:

“nondiscriminatory access to databases and associated signaling necessary for call routing and completion.” 47
U.S.C. Section 271 (c)(2)(B)(x).

b) Standards for Review

546. In the Second BellSouth Louisiana Order, the FCC required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to:

- (1) signaling networks, including signaling links and signaling transfer points;
- (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and
- (3) Service Management Systems (SMS).

547. The FCC also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).

548. In the Local Competition First Report and Order, the FCC defined “call-related databases” as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service. At that time, the FCC required incumbent LECs to provide unbundled access to their call-related databases, including but not

limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases. (Id. at 15741-42, para. 484).

549. In the UNE Remand Order the Commission clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.” Id. at para. 403.

(Section Adapted from the New Jersey 271 Order, Appendix C, with most cites, footnotes omitted)

c) Evidence, Issues/Positions

1) SBC Indiana Position

550. According to SBC Indiana, it maintains customer information and instructions for routing calls in several databases. It uses a Service Management System to administer the data: the SMS is where carriers may “create, modify, or update information in call-related databases.” First Report and Order, ¶ 493. And it uses a signaling network (which is physically separate from the voice network) to transmit such information to its switches. SBC Indiana’s signaling system, like that of most LECs, the Company contends, adheres to the Bellcore standard Signaling System 7 (SS7) protocol. “A typical SS7 network includes a signaling link that transmits signaling information in packets, from a local switch to a signaling transfer point (STP), which is a high-capacity packet switch.” UNE Remand Order, ¶ 380 n.746. “The STP switches packets onto other links” that “extend to other switches, databases, and STPs in the incumbent LEC’s network.” Id. “A switch routing a call to another switch will initiate a series of signaling messages via signaling links through a STP to establish a call path on the voice network between the switches.” Id.

551. SBC Indiana recognizes that the FCC has held that, under Checklist Item 10, a BOC must demonstrate that it provides requesting carriers with nondiscriminatory access to:

- (1) signaling networks, including signaling links and signaling transfer points;
- (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and
- (3) Service Management Systems (SMS). Georgia & Louisiana 271 Order at D-32.

552. SBC Indiana contends that it provides for nondiscriminatory access to all three functions and, therefore, is in full compliance with this checklist item. Testimony in support of this assertion was provided by SBC Indiana witness Deere.

Nondiscriminatory Access to the Signaling Network

553. SBC Indiana maintains that no party disputes that it provides unbundled, nondiscriminatory access to its signaling networks, including signaling links and Signal Transfer Points. SBC Indiana provides a SS7 Interconnection Service, which allows CLECs to use its SS7 network for signaling between CLEC switches, between CLEC and SBC Indiana switches, and between CLEC switches and those of other parties connected to the SS7 network. (SBC 9/26/02 Deere Aff. ¶ 230.) This arrangement is identical to what SBC Indiana uses itself. Id.

554. Where a CLEC obtains unbundled local switching, SBC Indiana provides “access [to signaling] from that switch in the same manner in which [SBC Indiana] obtains such access itself.” 47 C.F.R. 51.319(e)(1)(i). Unbundled switching is provided on the same switches that SBC Indiana uses to provide service to its own end users, the Company contends, so all signaling functions are identical. (SBC 9/26/02 Deere Aff. ¶ 231.)

555. Finally, SBC Indiana asserts that, in accordance with 47 C.F.R. 51.319(e)(1)(ii), it provides to a CLEC with its own switches “access to [SBC Indiana’s] signaling network for each of the requesting telecommunications carrier’s switches,” and this connection is “made in the same manner as an incumbent LEC connects one of its own switches to a signaling transfer point.” SBC Indiana provides access to its SS7 network through the Signaling Access Service. (SBC 9/26/02 Deere Aff. ¶ 232.) Access to the network, SBC Indiana explains, is provided by subscribing to a Dedicated Network Access Link, as described in SBC Indiana Operating Companies Tariff F.C.C. No. 2, Section No. 8, and to a dedicated STP port for carriers with their own Signal Transfer Points. (Id.)

Nondiscriminatory Access to the Call-Related Databases

556. Under Checklist Item 10, SBC Indiana recognizes that it must also demonstrate that it provides requesting carriers with nondiscriminatory access to its “call-related databases necessary for call routing and completion,” (Georgia & Louisiana 271 Order at D-32), which are databases “used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.” (UNE Remand Order, ¶ 403). The FCC, SBC Indiana notes, has specifically identified six such databases: the Calling Name Database (“CNAM”), the Line Information Database (“LIDB”), the Toll Free Calling Database (“800 Database”), the Advanced Intelligent Network Database (“AIN”), the 911 Database, and the E911 Database. 47 C.F.R. 51.319(e)(2)(i); SBC 9/26/02 Deere Aff. ¶ 238. (The latter two databases relate to Checklist Item 7, SBC Indiana notes, and are discussed in connection with that checklist item).

557. 800 Database: SBC Indiana allows CLECs to access its 800 Database to support the processing of toll-free calls. (SBC 9/26/02 Deere Aff. ¶ 241.) The database is used to identify the appropriate 800 service provider to transport a toll-free call, and the appropriate routing for the call, based on the toll-free number (e.g.,

1+800+XXX+XXXX). (Id. ¶¶ 240-241.) According to SBC Indiana, no party disputes that it provides nondiscriminatory access to the 800 Database.

558. AIN: SBC Indiana notes that the “Advanced Intelligent Network” is a network architecture that uses centralized databases that control call processing and manage network information so that those functions need not be performed at every switch. (SBC 9/26/02 Deere Aff. ¶ 249.) Thus, SBC Indiana explains, AIN allows some call processing functions to be performed outside the switch. (Id.) While requiring ILECs to provide access to AIN databases, however, the FCC concluded that ILECs are not required to provide access to the proprietary service software that resides in those databases. (UNE Remand Order, ¶ 402). Instead, according to SBC Indiana, CLECs are entitled to use an ILEC’s Service Creation Environment (SCE: a computer used to design, create, test, and deploy new AIN-based services) to develop their own AIN-based services. SBC Indiana states that it provides nondiscriminatory access to its AIN databases and access to its SCE, provided that appropriate security arrangements are made. (Id. ¶ 250.)

559. LIDB: The “Line Information Database” is where local exchange carriers store information about their end users’ accounts. (SBC 9/26/02 Deere Aff. ¶ 258.) The LIDB database contains information such as “whether a subscriber number is a valid working line, telephone line type, call screening information and validation information for calling cards.” First Report and Order, ¶ 467 n.1050. SBC Indiana no longer maintains its own LIDB. (SBC 9/26/02 Deere Aff. ¶ 257.) Rather, it contracts with Southern New England Telephone Diversified Group (“SNET DG”), which maintains a LIDB that SBC Indiana switches “query” in routing calls. (Id.) Almost by definition, SBC Indiana explains, a CLEC that uses SBC Indiana’s switching (by resale or by unbundled access to switching) accesses the LIDB in the same way that SBC Indiana does, by using the same switch. (Id. ¶ 260.) According to SBC Indiana, CLECs using their own switches can access the LIDB by interconnecting with SNET DG’s network, with SBC Indiana’s SS7 network (which gives them access through the same facilities and functions that SBC Indiana uses), or with a third party’s SS7 network that interconnects with SBC Indiana’s network. (Id.)

560. CNAM: The “Calling Name Database,” SBC Indiana contends, “contains the name of the customer associated with a particular telephone number and is used to provide Caller ID and related services.” (UNE Remand Order, ¶ 406). SBC Indiana explains that the Caller ID software retrieves the calling party’s name from a CNAM database and delivers it to the called party on their Caller ID equipment at home or work. SBC 9/17/02 Deere Aff. ¶ 261. SBC Indiana provides all CLECs nondiscriminatory access to its CNAM database. A CLEC that uses SBC Indiana’s switching gains access to the CNAM database through that switch, the same way SBC Indiana would; a CLEC that uses its own switching may interconnect with SBC Indiana’s SS7 network and access the CNAM database the same way that SBC Indiana’s switches do. Id. ¶ 262.

Nondiscriminatory Access to Service Management Systems (SMS)

561. To satisfy Checklist Item 10, SBC Indiana recognizes that it must also demonstrate that it provides requesting carriers with nondiscriminatory access to its "Service Management Systems (SMS)." Georgia & Louisiana 271 Order at D-32. The SMS that SBC Indiana uses to administer data in the LIDB and CNAM databases it informs is called Operator Services Marketing Order Processor (OSMOP). SBC 1/8/03 Deere Reply Aff. ¶ 257. SBC Indiana provides CLECs access to OSMOP to input, change, and maintain their data in SBC Indiana's CNAM database and in SNET DG's LIDB database. Id. ¶¶ 266, 268-69. According to the Company, CLECs can use the same two electronic interfaces that SBC Indiana uses, i.e., the Service Order Entry interface (which allows CLECs to send data directly to OSMOP) or the Interactive Interface (which is equivalent to the interface used by SBC Indiana's Database Administration Control personnel). Id. ¶¶ 269. In addition, carriers may submit a Local Service Request through the ordering interface, and OSMOP processes such requests in exactly the same manner as it does for SBC Indiana's retail and resale accounts. Id. ¶ 268.

2) AT&T Issues/Position

562. AT&T claims that SBC Indiana should be required to offer AT&T "access" to either its Privacy Manager service or its Service Creation Environment. AT&T 12/11/02 Comments at 24. AT&T claims that SBC currently refuses to do either. Id.

3) WorldCom Issues/Position

Non-Discriminatory Access to LIDB

563. According to WorldCom, SBC Indiana is currently limiting WorldCom's use of the LIDB to the provision of local service. WorldCom 12/11/02 Comments at 63. Because LIDB is generally used to validate calling cards, collect calls and third party call information, however, this restriction is improper, given that it excludes these very uses of the LIDB. Id. These LIDB restrictions are improper and anticompetitive, WorldCom contends. Id.

CNAM Batch Downloads

564. WorldCom alleges that obtaining Customer Name database ("CNAM") in a batch download form, as opposed to per-query access, is important. WorldCom 12/11Comments at 58. Because the CNAM database, as a call-related database, has been deemed a UNE, WorldCom contends, SBC Indiana is required to provide access thereto on just, reasonable and nondiscriminatory terms. Id. Forcing CLECs to purchase per query access, which requires even those CLECs with their own Signaling System 7 ("SS7") networks to pay for using SBC Indiana's SS7 network, does not meet this standard. Id. The whole notion of unbundling network elements, WorldCom asserts, was to allow CLECs to purchase only those UNEs they need to obtain from the incumbent. Id. WorldCom urges the Commission to join with Georgia, Tennessee, Michigan and

Minnesota and require the provision of CNAM information in batch download form, as well as on a per-query basis. Id. at 60.

SBC Indiana CNAM Update Accuracy

565. WorldCom suggests that there is a flaw in the way that SBC Indiana provisions CNAM for WorldCom customers who are calling SBC Indiana customers, resulting in the display of incorrect information on caller ID with name units. WorldCom Comments at 61. It cites one example of this problem and concludes that it has a detrimental effect on WorldCom customers. Id.

566. While SBC Indiana will correct the wrong information as each wrong piece of data is noticed, WorldCom notes, there is no timetable for implementing a permanent solution to prevent incorrect information from being displayed. Id. While SBC Indiana is taking steps to correct this problem, the only way that the problem can be identified (without preemptive action on SBC Indiana's part) is for a WorldCom customer to notify WorldCom if a third party, i.e., an SBC Indiana or another CLEC's customer notifies the WorldCom customer that the caller ID with name is displaying the wrong name. Id. at 62. Obviously, WorldCom contends, there can be long delays in any third party notifying the WorldCom customer about the problem. Id.

Directory Assistance Listings Download

567. WorldCom contends that, while the FCC has determined that the Directory Assistance Listing ("DAL") database is a UNE, SBC Indiana today does not offer DAL at TELRIC rates. WorldCom 12/11/02 Comments at 54-5. To be sure, it claims, there is disagreement as to whether DAL should be provided at TELRIC rates, with WorldCom asserting that TELRIC based rates are appropriate, and SBC Indiana contending that market-based rates are appropriate. According to WorldCom, the ability to receive the DAL database in a readily accessible format and at reasonable and nondiscriminatory prices is essential to its ability to compete in the directory assistance marketplace. Id. at 54. The FCC, WorldCom contends, has fully addressed the appropriateness and the need for DAL. See In the Matter of Provision of Directory Listing Information, First Report & Order, FCC 0127, January 2001, ¶ 1, 3, and 6 ("DAL Provisioning Order"). It is perfectly clear, WorldCom argues, that SBC Indiana must provide this DAL information to WorldCom and that it be priced at TELRIC, which is the only nondiscriminatory and reasonable pricing for this type of information. WorldCom Comments at 57. Indeed, it contends, federal law requires "just" "reasonable" and "non-discriminatory" pricing for DA and DAL regardless of whether or not directory assistance is required to be unbundled pursuant to Sections 251(c) and (d). Id. Until SBC Indiana first provides DAL to WorldCom (and other qualifying providers) at TELRIC rates, and in an acceptable manner, it will not satisfy Checklist Item 10. Id.

4) SBC Indiana Reply Position

568. According to SBC Indiana, the Checklist Item 10 requirement of nondiscriminatory access to databases and associated signaling necessary for call

routing and completion refers specifically to the signaling network that transmits data within the network, certain call-related databases necessary for call routing and completion, and the Service Management Systems (SMS) used to maintain the data.

569. No party, it asserts, disputes that SBC Indiana provides nondiscriminatory access to its signaling networks and to its Service Management Systems. So too, SBC Indiana contends, there is no dispute as to three of the six call-related databases identified by the FCC, i.e., 47 C.F.R. 51.319(e)(2)(i): the Toll Free Calling Database ("800 Database"), the 911 Database, and the E911 Database. The only disputes under this Checklist Item, SBC Indiana notes, relate to the Calling Name Database ("CNAM"), the Line Information Database ("LIDB"), and the Advanced Intelligent Network Database ("AIN").

LIDB

570. SBC Indiana is not, as WorldCom claims, "limiting WorldCom's use of the LIDB to those cases where WorldCom would use it for the provision of local service." (SBC 1/8/03 Deere Reply Aff. ¶ 101; WorldCom 12/11/02 Lehmkuhl Aff. ¶ 65.) Where WorldCom is providing long distance service, it may still access the LIDB; all it has to do is pay the applicable access charge. (SBC 1/8/03 Deere Reply Aff. ¶ 101.) WorldCom may not access the LIDB as a UNE when it provides long distance service, SBC Indiana contends, because the FCC has held that long-distance providers cannot use unbundling to evade long-distance access charges. Id. ¶ 102, citing First Report and Order, ¶ 30.

Per-Query Access vs. Bulk Downloads of CNAM

571. WorldCom's contention that SBC Indiana must provide bulk downloads of all the information in its CNAM database (as opposed to allowing CLECs to submit "queries" for individual calls the way SBC Indiana does) has been demonstrated to be wrong the Company claims. (SBC 1/8/03 Deere Reply Aff. ¶ 79.) In the Verizon Virginia arbitration, SBC Indiana notes, WorldCom made the same arguments concerning bulk access that it makes here. Id. ¶ 80. The FCC expressly held that "the Act and the Commission's rules do not entitle WorldCom to download a copy of Verizon's CNAM database or otherwise obtain a copy of that database from Verizon." Verizon Virginia Arbitration, ¶ 524. The FCC noted that an ILEC need only allow access to call-related databases "[f]or purposes of switch query and database response through a signaling network" and "by means of physical access at the signaling transfer point," the way SBC Indiana does. Id. The FCC also expressly rejected WorldCom's arguments that bulk downloads are required for "nondiscriminatory access." Id. ¶¶ 525-527. Further, SBC Indiana contends, WorldCom's citations to decisions by a few other state commissions (which predate the Verizon Virginia Arbitration and are outnumbered by the weight of state commission decisions going the other way) are obsolete. (SBC 1/8/03 Deere Reply Aff. ¶ 82.)

Access to DAL at TELRIC-Based Prices

572. As discussed under checklist item 7, SBC Indiana asserts that, contrary to WorldCom's arguments, federal law does not require it to provide "bulk" DA listings at TELRIC-based rates. According to SBC Indiana, WorldCom has provided no legal authority for its assertion that DA listings updates are a UNE. (SBC 1/8/03 Nations Reply Aff. ¶ 5.)

Access to AIN Databases

573. SBC Indiana notes that AT&T claims that SBC must provide access to SBC Indiana's Primary Manager. SBC 1/8/03 Deere Reply Aff. ¶ 108; AT&T 12/11/02 Fettig Aff. ¶¶ 46-60. SBC Indiana argues that this claim is unfounded. According to SBC Indiana, AT&T's claim has already been rejected in the UNE Remand Order, when the FCC held incumbents need not unbundle privacy manager service, as it is a proprietary AIN service. UNE Remand Order ¶ 409. SBC Indiana currently provides nondiscriminatory access to its Service Creation Environment ("SCE") for CLECs to design their own AIN-based offerings and has developed a new CLEC Guide explaining the methods and procedures applicable to SCE access. (SBC 1/8/03 Deere Reply Aff. ¶¶ 111-18; SBC 1/8/03 Alexander Reply Aff. ¶ 26.)

d) Commission Review and Conclusion

574. The Commission finds that WorldCom's claim that SBC Indiana is limiting its use of LIDB to only the provision of local service is without merit. When a CLEC, such as WorldCom, uses LIDB to provide local exchange service, it does so under UNE rates. When a CLEC wishes to use LIDB to provide inter-exchange service, it purchases access from SBC Indiana's access tariff. There is no dispute about CLECs ability to gain access under these terms.

575. WorldCom raises a dispute concerning its desire for batch or bulk CNAM v. per query access. However, the FCC has rejected arguments asserting that bulk downloads are required for non-discriminatory access. The state commissions that found otherwise rendered their decisions prior to the FCC's pronouncement in the Verizon-Virginia Arbitration matter. Thus, in this proceeding, we will not require SBC to grant WorldCom access to SBC's CNAM database on a bulk or batch download basis. This decision should not be construed as allowing SBC Indiana to charge CLECs twice for using SBC's SS7 network to access SBC's CNAM database on a per query basis. It is clear that SBC Indiana should not be permitted to do so, and that its UNE tariff should not reflect such double charging.

576. WorldCom's claim that SBC Indiana must provide DAL access at TELRIC-based prices is addressed under checklist item 7.

577. AT&T's claim that SBC Indiana is obligated to provide access to its Privacy Manager is unsupported. As such, the Commission finds that SBC Indiana is in compliance with checklist item 10 with respect to availability and price.

1) Overall Assessment

578. On the whole and based upon the record before us, and there being no dispute or showing to the contrary, on the whole, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 10, subject to the prohibition on charging CLECs twice for using SBC's SS7 network for per query access to the CNAM database.

11. CHECKLIST ITEM 11 – Number Portability

a) Description of Checklist Item

579. Section 271(c)(2)(B) (xii) of the 1996 Act requires a 271 applicant to comply with: **the number portability regulations adopted by the Commission [“FCC”] pursuant to section 251.** 47 U.S.C. § 271(c)(2)(B)(xii).

b) Standards for Review

580. Section 251(b)(2) requires all LECs to provide, “to the extent technically feasible, number portability in accordance with requirements prescribed” by the FCC.” 47 U.S.C. § 251(b)(2). The Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” *Id.* §153(30).

581. In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [FCC].” *Id.* § 251(e)(2).

582. Pursuant to these statutory provisions, the FCC requires LECs to offer interim number portability “to the extent technically feasible.” The FCC also requires LECs to gradually replace interim number portability with permanent number portability. The FCC has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability, and created a competitively neutral cost-recovery mechanism for long-term number portability.

(Section Adapted from New Jersey 271 Order with cites and footnotes omitted)

c) Evidence, Issues/Positions

1) SBC Indiana Position

583. “Number portability”, SBC Indiana explains, refers to the ability of end users to keep their existing telephone numbers when they switch from one telecommunications carrier to another, while remaining at the same location. (SBC 9/26/02 Smith Aff. ¶ 19). This process, SBC Indiana notes, is sometimes described as

"porting" the number from one carrier to the other. (Id. ¶ 13). Checklist Item 11 requires that, after the FCC issues regulations to require permanent number portability, a BOC must show "full compliance with such regulations." 47 U.S.C. § 271(c)(2)(B)(xi). These FCC regulations, referred to in Checklist Item 11, require the deployment of "long term number portability," or LNP (as opposed to "interim number portability" the system that was in place while the regulations were developed and implemented). SBC Indiana's assertion of compliance with Checklist Item 11 is set out in the testimonies of witnesses Deere and Smith.

Availability

584. SBC Indiana asserts that there is no dispute as to its "full compliance" with the relevant FCC orders and Checklist Item 11. According to SBC Indiana, the FCC's First Report and Order required incumbent carriers to deploy LNP in the country's top 100 Metropolitan Statistical Areas ("MSAs") by December 31, 1998. (SBC 9/26/02 Smith Aff. ¶ 11). SBC Indiana contends that it has deployed LNP in all of the required MSAs within its service area; in fact, by August 1999, SBC Indiana had deployed LNP in every switch in its operating territory, representing 100% of its access lines. (Id. ¶¶ 11-12). There is also no dispute, SBC Indiana asserts, but that its deployment of LNP fully satisfies the myriad performance criteria and technical requirements established by the FCC. For instance, in providing number portability, SBC Indiana assures the support of existing network services, features and capabilities, and assures that no unreasonable degradation in service quality results from porting. (Id. ¶¶ 14-15).

585. SBC Indiana notes that telephone numbers for all carriers, including SBC Indiana, are maintained by a regional third-party Number Portability Administration Center ("NPAC"), i.e., Neustar. (SBC 9/26/02 Smith Aff. ¶ 12). SBC makes LNP available to CLECs through interconnection agreements. (Id. ¶ 13). Currently, once a date and time for an LNP conversion have been agreed upon, the requesting carrier must then input a "create message" to the regional administrator, indicating its intent to port a telephone number. (Id.). SBC Indiana sends a matching message. (Id.). The requesting carrier may then activate the ported number on the due date, and the LNP administrator broadcasts the number, along with the associated LNP routing information, to all LNP-capable service providers so they can properly route calls. (Id.).

Pricing

586. SBC Indiana observes that, in the Third Report and Order, the FCC established "an exclusively federal recovery mechanism for long-term number portability." Id. ¶ 29. According to SBC Indiana, it has effective tariffs for a monthly number-portability charge and a query-service charge. (SBC 9/26/02 Smith Aff. ¶ 16). The Company asserts that these tariffs comply with the relevant FCC orders. (Id.).

d) Commission Review and Conclusions

1) Overall Assessment

587. On the whole of the record before the Commission, it is reasonable to conclude that SBC Indiana satisfies the requirements of Checklist Item 11 with respect to availability. The Commission does so find. With respect to price, the IURC defers to the FCC's review of SBC's applicable interstate tariffs, given the "exclusively federal recovery mechanism for long-term number portability." The Commission does so find. SBC Indiana has implemented long-term number portability ("LNP") throughout all of its switches in Indiana and provides long-term number portability in accordance with the FCC's rules. The non-discrimination and "meaningful opportunity to compete" requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

12. CHECKLIST ITEM 12 – Local Dialing Parity

a) Description of Checklist Item

588. Section 271(c)(2)(B)(xii) requires a 271 applicant to provide:

“[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).” 47 U.S.C. § 271 (C)(2)(B)(xii).

b) Standards for Review

589. Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.” 47 U.S.C. § 251(b)(3). The Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation. 47 U.S.C. § 153(15).

590. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call. 47 C.F.R. § 51.205, 51.207. Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers. See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); Local Competition Second Report and Order, 11 FCC Rcd at 19400, 19403.

(Section Adapted from New Jersey 271 Order, Appendix C, with cites and footnotes omitted).

c) SBC Indiana Position

591. Local dialing parity, SBC Indiana explains, means that all customers within a local calling area can dial the same number of digits to make a local telephone call, regardless of the identity of the customer's or the called party's carrier. See 47 U.S.C. § 153(15); 47 C.F.R. § 51.207. Checklist item 12 requires SBC Indiana to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." 47 U.S.C. § 271(c)(2)(B)(xii). In turn, section 251(b)(3) of the Act provides:

Dialing Parity – The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

592. The Company asserts that the evidence provided by SBC Indiana witness Deere establishes that it is in full compliance with the Checklist Item 12. (See SBC 9/26/02 Deere Aff. ¶¶ 279-283). According to SBC Indiana, its binding interconnection arrangements do not require any CLEC customer to use access codes or additional digits to complete local calls to SBC Indiana customers. (Id. ¶ 283). Nor are SBC Indiana's customers required to dial any access codes or additional digits to complete local calls to a CLEC customer. (Id.) SBC Indiana further explains that CLEC central office switches are connected to the trunk side of SBC Indiana's switches in the same manner as SBC Indiana or other LEC switches. Thus, there are no different or additional dialing requirements for CLEC customers or any built-in delays. (Id.) From the end user's perspective, SBC Indiana points out, the interconnection of SBC Indiana networks and CLEC networks is seamless. (Id.)

d) Commission Review, and Conclusion

1) Overall Assessment

593. On the whole of the record before the Commission, it is reasonable to conclude that SBC Indiana satisfies the requirements of Checklist Item 12 with respect to availability and price. The Commission does so find.

13. CHECKLIST ITEM 13 - Reciprocal Compensation

a) Description

594. Section 271(c)(2)(B)(xiii) of the Act requires that a 271 applicant:

enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”
47 U.S.C. Section 271 (c)(2)(B)(xiii).

b) Standards for Review

595. At the outset, Section 251 (b) (5) establishes the LEC duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. For purposes of compliance with section 251(b)(5) above, Section 252 (d)(2)(A) provides that “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless:

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.” 47 USC § 252 (d)(2)(A)

596. Section 252 (d)(2) (B), sets out “rules of construction for paragraph (2) directing that this paragraph shall not be construed:

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive recovery (such as bill-area-keep arrangements); or

(ii) to authorize the [FCC] or any State Commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

c) Evidence, Issues/Positions.

1) SBC Indiana Position.

597. SBC Indiana witness Scott Alexander provided testimony with respect to this checklist item. There is no dispute, SBC Indiana claims, as to the facts that demonstrate its Checklist Item 13 compliance, to wit:

-SBC Indiana has entered into reciprocal compensation arrangements as part of legally binding interconnection agreements and an effective tariff, and it is paying reciprocal compensation under those arrangements (SBC 9/26/02 Alexander Aff. ¶ 103);

-SBC Indiana's agreements provide for reciprocal compensation at least to the extent required by the Act (Id.);

598. The issues raised relative to this checklist item, SBC Indiana states, all revolve around the FCC's ISP Compensation Order, which considered inter-carrier compensation for traffic delivered to Internet Service Providers ("ISP-bound traffic").

599. This Commission, SBC Indiana observes, has ordered it to pay reciprocal compensation on ISP-bound traffic under certain interconnection agreements. (SBC 9/26/02 Alexander Aff. ¶ 104). Recently however, SBC Indiana notes, the FCC has determined that "ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5)." ISP Compensation Order, ¶ 3. Nevertheless, SBC Indiana maintains, it complies with the IURC's orders, pending modification or judicial review. (SBC 9/26/02 Alexander Aff. ¶¶ 103-106).

600. More important, SBC Indiana contends, is that the FCC has previously held that a BOC's payment (or non-payment) of inter-carrier compensation on ISP-bound traffic is "irrelevant to checklist item 13." See Kansas & Oklahoma 271 Order, ¶ 251; Pennsylvania 271 Order, ¶ 119; SBC 9/26/02 Alexander Aff. ¶ 105.

Commission-Approved Rates and the FCC's "Rate Cap" Election

601. SBC Indiana asserts that its reciprocal compensation rates are based on costs approved by the Commission in Cause No. 40611. SBC 9/26/02 Alexander Aff. ¶ 128.

602. The ISP Compensation Order, SBC Indiana explains, allows incumbent LECs to elect *out* of reciprocal compensation rates applied by state commissions to ISP-bound traffic, and into a series of rate "caps" designed as a transitional measure during the time that the FCC considers permanent rules for compensation on such traffic. Id. ¶¶ 7-8. The rate caps decrease over time, SBC Indiana notes, consistent with the FCC's tentative conclusion that it would replace the reciprocal compensation regime with a "bill and keep" system where LECs carry each others' traffic without payment. Id. ¶ 7.

603. SBC Indiana notes that the FCC set two conditions for this election: (1) an incumbent LEC making the election must also offer to exchange traffic that is subject to section 251(b)(5) at the same rates (Id. ¶ 8); (2) the election "does not alter existing interconnection agreements, except to the extent that parties are entitled to invoke contractual change-of-law provisions (Id. ¶ 82). SBC Indiana informs that as of June 1, 2003, SBC Indiana has elected the FCC's rate "caps."

2) AT&T Issues/Position

604. AT&T contends that SBC Indiana must permit CLECs to "opt in" to terms and provisions for reciprocal compensation in existing interconnection agreements. AT&T 12/11/02 Comments at 25-26. AT&T argues that the FCC's ISP Compensation Order did not restrict the right of CLECs to opt into Interconnection Agreements entered after the FCC ISP Compensation Order went into effect. (Id. at 25).

3) FBN Position

605. FBN suggests that SBC Indiana “delayed” payment of reciprocal compensation. (FBN 12/11/02 Comments at 10-11).

4) SBC Indiana Reply Position

606. According to SBC Indiana, no one discusses, much less disputes, that SBC Indiana has entered into numerous legally binding reciprocal compensation arrangements, and those arrangements satisfy “the requirements of section 252(d)(2).” The only dispute at hand, SBC Indiana asserts, concerns a subject that does not matter for purposes of the checklist, and is not even ripe for adjudication, i.e., the terms that SBC Indiana “offers” for *future* reciprocal compensation arrangements to implement the FCC’s ISP Compensation Order.

607. While SBC Indiana’s position is that a CLEC may adopt all sections of an approved Interconnection Agreement in Indiana, with the exception of the reciprocal compensation provisions, SBC Indiana acknowledges that the IURC has disagreed with this interpretation of the impact of the FCC’s ISP Compensation Order in two orders it issued in Cause Nos. 41268-INT-98 and 41268-INT-92. (SBC 9/26/02 Alexander Aff. ¶¶ 6, n12). In light of these commission orders and their pending appeals, and without waiving its position under the ISP Compensation Order, SBC Indiana agrees to allow CLECs to adopt reciprocal compensation provisions of a requested Agreement when such provisions were approved by the IURC following the ISP Compensation Order, subject to the outcome of the appeals in IURC Cause Nos. 41268-INT-98 and 41268-INT-92. (*Id.*)

608. Likewise, SBC Indiana notes, although there seems to be no dispute that the FCC’s order prevents entering carriers from opting into other carriers’ existing arrangements in at least some cases (the only dispute is whether there are any existing arrangements that can be opted into), that does not affect existing arrangements, nor does it affect the substantive compliance of any arrangement. It only addresses the procedure by which future arrangements are to be made.

609. In any event, SBC Indiana contends, to the extent that any CLEC wants to enter a reciprocal compensation arrangement and disagrees with SBC Indiana’s offer, it has full opportunity to do what parties do in any other such disagreement – negotiate or seek arbitration – and the Commission can resolve any disagreement at such time. Pending negotiation or arbitration, SBC Indiana notes, the CLEC can enter into an interim arrangement to receive compensation immediately. The amount of compensation would be trued up to reflect the final agreement.

610. SBC Indiana disputes FBN’s claim that SBC Indiana delayed payment of reciprocal compensation, and states that FBN’s real complaint is that SBC Indiana delayed interconnection (obviously, SBC Indiana avers, no reciprocal compensation is due where there is no interconnection) and that in any event, SBC asserts, FBN’s accusations are unfounded. (SBC 1/8/03 Deere Reply Aff. ¶¶ 40-47.)

d) Commission Review and Discussion

611. We note, at the outset, that no party disputes SBC Indiana's entry into agreements containing reciprocal compensation provisions. No CLEC has come forward charging SBC Indiana to be in breach of its contractual obligation under an agreement. No party alleges nonpayment by SBC Indiana of its reciprocal compensations obligations arising out of interconnection agreements – FBN's arguments concern its view that SBC Indiana delayed interconnection, a view the Commission rejected under checklist item 1. AT&T's issue regarding opt-ins was addressed in Cause Nos. 41268-INT-98 and 41268-INT-92.

1) Overall Assessment

612. On the whole of the record before the Commission, and with no “factual” dispute to resolve, it is reasonable to conclude that SBC Indiana satisfies the requirements of Checklist Item 13 with respect to availability and price. The Commission does so find. Furthermore, as there are no performance measures for reciprocal compensation, and as no party alleged discrimination, we find that SBC Indiana has complied with the availability, pricing, and nondiscrimination requirements for Checklist Item No. 13.

14. CHECKLIST ITEM 14 – Resale

a) Description of Checklist Item

613. Section 271(c)(2)(B)(xiv) of the Act requires a 271 applicant to make telecommunications services ... available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).” 47 U.S.C. § 271 (c)(2)(B)(xiv).

b) Standards for Review

614. At the outset, section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. § 251 (c)(4)(A). Further, section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on service resold under section 251(c)(4)(A). 47 U.S.C. § 251(c)(4)(B). Finally, section 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(d)(3)

c) SBC Indiana Position

Availability

615. Testimony to support SBC Indiana's assertion of compliance with Checklist Item 14, was provided by its witness, Scott Alexander. SBC Indiana maintains

that it provides telecommunications services to CLECs, for resale, in accordance with its obligations under the Act. (SBC 9/26/02 Alexander Aff. ¶ 115). It asserts that CLECs are able to resell these services to the same customer groups and in the same manner as SBC Indiana. (Id.). SBC Indiana offers wholesale discounts on promotional offerings lasting more than 90 days. (Id. ¶ 118). For retail services that SBC Indiana offers to a limited group of customers (such as grandfathered services), SBC Indiana explains that it allows resale to the same group of customers to which it sells the services, in accordance with 47 C.F.R. § 51.615. (Id. ¶ 119).

616. Further, SBC Indiana maintains that its customer-specific contracts are available for resale to similarly situated customers without triggering termination charges or transfer fees to the end user. (Id. ¶ 121).

Pricing

617. According to SBC Indiana, the IURC approved wholesale rates for resold services that reflect a discount based on avoided cost in Cause No. 41055. SBC Makarewicz Aff. ¶ 31. Those wholesale rates are reflected in tariffs and have been incorporated into interconnection agreements, SBC Indiana contends, making them available to all CLECs. (Id. ¶ 143).

d) Commission Review, and Conclusion

1) Overall Assessment

618. On the whole, and based upon the record before us, we find that SBC Indiana has complied with the availability and pricing requirements of Checklist Item No. 14. The non-discrimination and “meaningful opportunity to compete” requirements and issues pertaining to the BearingPoint OSS Test and Performance Measure Audit and the three months of commercial results that SBC filed with this commission will be discussed later.

C. Performance, Nondiscrimination and Meaningful Opportunity to Compete Analysis

619. As the DOJ noted in its recent comments in the “Michigan IV” 271 proceeding, “Performance metrics must be reliable – meaningful, accurate, and reproducible – if they are to fulfill their dual purposes of depicting an incumbent’s present level of performance and of establishing performance benchmarks that enable regulators to detect ‘back-sliding’ and constrain anticompetitive behavior effectively. The reliability of SBC’s metrics continues to be strongly contested, especially in light of continuing delays with the BearingPoint audit.”⁴⁰ The DOJ further noted that “Disputes about performance data continue to revolve around two basis issues: the status of the Michigan PSC-initiated BearingPoint audit and the scope of the SBC-initiated E&Y

⁴⁰ In re: Application of SBC for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-138, Evaluation of the U.S. Dept. of Justice, Sect. III., 12 (July 16, 2003).

review.”⁴¹ Substitute “Indiana” for “Michigan” and the DOJ’s assessment remains true. As in Michigan, CLECs in Indiana “argue that the incomplete nature of the BearingPoint audit is a fatal problem, deemphasizing E&Y’s positive conclusions due to SBC’s sponsorship and the narrower scope of review. In contrast, SBC seeks to distance itself from the BearingPoint audit and relies primarily upon the E&Y review and its positive conclusions.”⁴²

620. We agree with the DOJ’s analysis and recommendations to the FCC:

A state-sponsored audit is an important source of information. As such, the BearingPoint metrics audit and its findings to date should not be ignored or minimized simply because the audit is not progressing as fast as SBC desires. SBC itself appears to be responsible for some of the delays in completion of BearingPoint’s audit. It should not be permitted to bootstrap its position by citing the incomplete nature of the audit as grounds for downplaying the audit’s findings to date.

With respect to the E&Y verification, weight should be given to its conclusions commensurate with its more limited scope and methodology . . . The [FCC] should . . . use great care before dismissing, based solely on the findings of E&Y’s review, problems identified by BearingPoint’s findings or marketplace performance data.

In re: Application of SBC for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-138, Evaluation of the U.S. Dept. of Justice, Sect. III., 13, 14 (July 16, 2003).

621. Based upon the record before us at this time, and given when SBC filed its four-state application with the FCC in relation to the status of the BearingPoint PM Audit, the IURC is unable to conclude with any meaningful degree of certainty whether SBC has, or has not, met the nondiscrimination requirements of Section 271 or the FCC’s “meaningful opportunity to compete” standard for those performance measures, products, and services for which there is no retail analogue. In general, the failure of SBC to pass many portions of PMR 4 and PMR 1 and the numerous PMR 5 Observations [and Exceptions], regarding the reporting and calculation of SBC Indiana’s performance results, as well as the unfinished nature of all three tests, make us hesitant to place much weight on the three months of commercial results that SBC Indiana filed with this Commission in Cause No. 41657 (November and December, 2002, and January, 2003).

622. There is insufficient evidence at this time for us to conclude that the problems and potential problems with the integrity (PMR 4) of the data that BearingPoint has reported for both Test CLEC and aggregate (commercial) data either do, or do not, also affect the data underlying the three months of commercial results that SBC has reported to us. Likewise, there is insufficient evidence at this time to assure us that the problems and potential problems that BearingPoint has reported for

⁴¹ Id.

⁴² Id.

PMR 1 either will, or will not, affect the collection, storage, transfer, and processing of either current commercial data or of data that may be needed for future audits. Finally, given the many problems that BearingPoint has discovered with SBC's calculation of its performance results and the unfinished status of PMR 5, we cannot conclude at this time that SBC Indiana is, or is not, calculating or reporting its performance results correctly. All of these problems, if not corrected, could have serious implications for the FCC's ability to (1) detect discriminatory behavior and/or a failure to provide CLECs with a meaningful opportunity to compete and (2) to ensure that SBC does not "backslide" following the grant of Section 271 authority for SBC Indiana. Nevertheless, it is possible that, as the BearingPoint PM audit progresses, and if SBC Indiana corrects the problems that BearingPoint discovers, that the FCC may be able to conclude that those problems, and those types of problems discovered and reported for all three tests (PMR 1, PMR 4, and PMR 5) do not, in fact, affect the three months of commercial results that SBC has filed with the FCC.

623. For the reasons stated above, we cannot conclude from SBC Indiana's Three Months of Commercial Results, filed in Cause No. 41657, that the Company has or has not complied with the statutory nondiscrimination requirements of Section 271 or with the FCC's "meaningful opportunity to compete" standard when there is no retail analogue.⁴³ At this time, we cannot conclude that SBC's reported results either are, or are not, accurate. Similarly, at this time, we cannot conclude that the data underlying the commercial results either are, or are not, valid and reliable. There are also some anomalies and apparent inconsistencies within the commercial results affidavit and the attached spreadsheets, or between the commercial results and the BearingPoint results. The cause for these anomalies is unclear; no conclusions can be drawn here, either.

1. CHECKLIST ITEM 1: Interconnection

Interconnection Trunking

624. SBC Indiana states that it passed each of the performance measurements that address the operating quality of existing interconnection trunks (in terms of the percentage of calls blocked) and the timely provisioning of new interconnection trunks in at least two of the three study period months. (SBC 3/14/03 Ehr Aff. ¶ 32). SBC Indiana satisfied the benchmark for the rate of call blockage in all three months of the study period, and for the period as a whole only 0.01% of the more than 58 million total calls captured by the sampling process were blocked. (*Id.*) SBC Indiana further states that it did not miss a single due date for non-project orders for new installations reported during the study period, did not miss a single due date for project orders in two of the three months, and met the benchmarks for both project and non-project orders in all three months. (*Id.* ¶ 35). Further, the average installation interval for CLEC interconnection trunks was within the 20-day benchmark in two of the three months, with only a slight shortfall in the other month. (*Id.* ¶ 36).

⁴³ See, e.g., New York 271 Order, Paras. 5, 44 – 46, 55, 60.

625. The Commission notes that no party raised any issue with respect to performance measures or results for SBC Indiana's provision of interconnection to CLECs.

Collocation

626. SBC Indiana states that its performance measures address the percentage of collocation due dates missed, the average delay for missed due dates, and the percentage of collocation requests that are processed within the established timeframes. SBC Indiana states that, over the study period, it did not miss a single collocation due date, and thus there were no "delay days" to measure. (SBC 3/14/03 Ehr Aff. ¶ 39). SBC Indiana further states that it processed every CLEC request for cageless collocation and for additions to existing collocation arrangements within the established timeframes. (*Id.*).

627. No party raised any issue in Phase 3 regarding collocation.

1. Commission Review and Conclusion

1) Overall Assessment

628. The Commission defers the analysis of commercial results for Checklist Item No. 1 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC is unable to reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 1.

2. CHECKLIST ITEM 2: UNBUNDLED NETWORK ELEMENTS

a) Operations Support Systems

629. SBC Indiana states that it achieved parity or the associated benchmark for 92.1% of OSS-related performance measures in at least two of the last three months of the study period. (SBC 3/14/03 Ehr Aff. ¶ 28).

630. In addition to the commercial performance data on OSS, SBC Indiana explains that the Commission retained BearingPoint to conduct an independent third-party test of the commercial readiness of SBC Midwest's OSS interfaces, documentation and processes. Over the course of 31 months, BearingPoint evaluated 502 separate test criteria relating to pre-ordering, ordering, provisioning, maintenance and repair, billing, and overall relationship management and infrastructure, by performing hundreds of thousands of transaction tests and extensive process reviews. There were two types of OSS tests: (1) Process and Procedure Reviews ("PPR"), in which BearingPoint reviewed documents and observed and interviewed personnel, in order to assess the processes and procedures used by SBC Indiana; and (2) Transaction Verification and Validation ("TVV") in which BearingPoint submitted test transactions (such as orders) or reviewed commercial transactions submitted by CLECs, and then examined the results. (SBC 05/01/03 Cottrell Aff. ¶ 7).

631. As explained by Company witness Mark Cottrell, SBC Indiana satisfied 467 of the 492 applicable test criteria related to OSS functions, an overall success ratio of 95 percent. SBC Indiana provided the following table to summarize the results by test "domain," showing the number of test criteria that BearingPoint found to be either "Satisfied," "Not Satisfied," or "Indeterminate." The test domains of Order Management and Maintenance and Repair separately show (i) the results applicable to testing of current capabilities and (ii) the results of "volume" testing, which address capability to handle potential future increases in volume.

OSS Domain / Area	Satisfied	Not Satisfied	Indeterminate	Total Applicable	Percent Satisfied
Pre-Order / Order	63	2	0	65	96.9%
Provisioning	78	0	6	84	92.8%
Maintenance and Repair	62	1	0	63	98.4%
Billing	95	0	0	95	100%
Relationship Management	131	0	2	133	98.5%
Volume Tests	50	12	0	62	80.1%
Totals	479	15	8	502	95.4%

632. SBC Indiana states that BearingPoint's application of the "Satisfied" and "Not Satisfied" ratings was a statistical, non-qualitative, "yes" or "no" scoring exercise. SBC Indiana explains that none of the "Not Satisfied" OSS related findings are material enough to affect checklist compliance. Rather, each of the 15 "Not Satisfied" test criteria relate to areas in which SBC Indiana (i) achieved high performance levels, albeit not at the numeric benchmarks set by BearingPoint, and/or (ii) has already taken corrective action and expects successful retest results, and/or (iii) will resolve this issue consistent with the Commission's direction. (SBC 05/01/03 Cottrell Aff. ¶ 8.)

1) Pre-Ordering

633. Pre-ordering "includes those activities that a carrier undertakes to gather and verify the information necessary to place an order." Kansas & Oklahoma 271 Order, ¶ 120. As described above, SBC Indiana offers CLECs two main electronic interfaces for pre-ordering: (1) EDI/CORBA, an "application to application" interface that can understand inquiries submitted in either of two industry standard formats (EDI and CORBA); and (2) Enhanced Verigate (also known as "Web Verigate"), a Graphical User

Interface that accepts commands from CLEC representatives working on computer screens, much the same way as an Internet web browser works. According to SBC Indiana, the majority of current inquiries are submitted through the EDI/CORBA interface.

Pre-Ordering: Timeliness

634. SBC Indiana states that it is providing CLECs with large volumes of pre-order information on a timely basis. For November 2002 – January 2003, SBC Indiana processed nearly 175,000 commercial pre-order inquiries, and it met the applicable benchmarks for 37 of the 38 categories for which there were sufficient volume (10 inquiries) to permit statistical analysis. (SBC 3/14/03 Ehr Aff. ¶¶ 45-46). Overall, SBC Indiana processed 97.2 percent of pre-order inquiries within the applicable benchmark interval.

635. BearingPoint achieved similar results in its independent testing. BearingPoint submitted approximately 2,100 test inquiries over EDI/CORBA (over 1,300 in the EDI format, and over 800 in CORBA), and timed SBC Indiana's response.⁴⁴ BearingPoint Report, Tables 1-8 & 1-9 (pp. 811-812). The test cases included all 16 types of pre-order information. *Id.* Tables 1-2, 1-8 & 1-9. Based on the results of this test, BearingPoint determined that SBC Indiana satisfied all 16 test criteria (TVV1-5 through 1-20, pp. 787-794).

Pre-Ordering: Accuracy of Response

636. BearingPoint submitted test inquiries via EDI/CORBA and the Verigate Graphical User Interface. It reviewed SBC Indiana's responses and found that the EDI/CORBA and Verigate pre-order interfaces provided the appropriate pre-order functionality for all 16 pre-order inquiry types tested (such as checking the end user's address, or obtaining loop "qualification" information for Digital Subscriber Line service).⁴⁵ BearingPoint Report, TVV 1-3. BearingPoint also reviewed each of the pre-order responses, and concluded that each interface provided responses for all 16 pre-order inquiry types that were clear, accurate, and contained all information specified in the user guide. *Id.* TVV 1-29. BearingPoint was able to create, complete, and submit valid orders using the information it obtained via SBC Indiana's pre-order interfaces.

⁴⁴ BearingPoint did not test response times for the Verigate Graphical User Interface, as that interface does not record electronic "time stamps" the way that EDI/CORBA does.

⁴⁵ These 16 pre-order functions include each of the six pre-order functions described by the FCC in prior Section 271 Orders: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information; and (6) loop qualification information. *Virginia 271 Order*, App. C, ¶¶ 34-35. In addition, BearingPoint evaluated SBC Indiana's other pre-order functions: (7) CSR with Listings; (8) loop pre-qualification information; (9) network channel inquiry; (10) connecting facilities assignment; (11) common language location indicator; (12) pending order status; (13) provisioning order status; (14) PIC/LPIC inquiry; (15) scheduling inquiry/dispatch; and (16) listings for telephone number inquiry. *See* BearingPoint Final Report at page 805, Table 1-2.

Integration of Pre-Ordering and Ordering Systems

637. There appears to be no dispute about the governing legal standard – both SBC Indiana and AT&T cite to paragraphs 119-120 of the Georgia & Louisiana 271 Order, which provide that there is no requirement for a BOC to integrate pre-order and order information. Rather, the BOC must “enable” the CLEC to transfer pre-order information electronically into the CLEC’s ordering interface.

638. AT&T claims that SBC Indiana’s OSS fail to provide the capability to integrate pre-ordering and ordering systems. (AT&T Connolly Aff. ¶¶ 36-38.) SBC Indiana strongly disagrees and argues that the BearingPoint Report successfully tested a “pre-order/order integration process” and “verified” SBC Indiana’s compliance with integration commitments made in the Illinois Plan of Record pursuant to SBC/Ameritech Merger Condition 29. (SBC 5/01/03 Cottrell Rebuttal Aff. ¶¶ 32-32.)

639. AT&T responds that BearingPoint merely validated a manual means for populating local service orders using pre-order information. In other words, AT&T asserts that BearingPoint only looked at whether a CLEC can take pre-order information and manually input it into SBC Indiana’s ordering system. However, SBC Indiana responds, BearingPoint validated a CLEC’s ability to *electronically* integrate, and did so in three ways. First, according to SBC Indiana, BearingPoint evaluated whether SBC Midwest separates or “parses” the information properly. Parsing of pre-order information, by itself, is sufficient to meet the FCC’s Section 271 requirements for integration. Georgia & Louisiana 271 Order, ¶ 120. Second, according to SBC Indiana, BearingPoint verified that it was able to populate orders based upon the information available from the pre-order response. This assists a CLEC in electronically transferring the information contained on the pre-order response into the order. Third, according to SBC Indiana, in its evaluation of the integration process, BearingPoint reviewed SBC Midwest’s pre-order and order documentation and found it clear, accurate and complete. (SBC 5/01/03 Cottrell Aff. ¶ 32.)

b) Commission Review and Conclusion

640. The Commission defers the analysis of commercial results for pre-ordering to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 2 (pre-ordering).

2) Ordering

Ordering: Line Loss Notices

641. SBC Indiana explains that it has taken the following actions to improve LLN performance:

- SBC Indiana has corrected, and will continue to correct, any situations that cause loss notifications to be inaccurate or untimely. No such situations are known to exist.
- SBC Indiana has provided the industry extensive information concerning problems it has uncovered related to line loss notifications including, Accessible Letter format, specific information regarding problem start and end date, scope of problem, and corrective action taken.
- SBC Indiana has conducted a LLN workshop and has followed up with several conference calls.
- SBC Indiana has continued to meet with CLECs on an as needed basis to discuss line loss issues.
- SBC Indiana's retail operations now rely exclusively on the same line loss notifications as those sent to CLECs.
- SBC Indiana has implemented several system enhancements (including mechanization of "winbacks").

(SBC 1/8/03 Cottrell Reply Aff. ¶¶ 41-57.)

642. BearingPoint, which has intensely examined LLNs for some time as part of its test, has confirmed that SBC Indiana was provisioning LLNs on a timely and accurate basis. BearingPoint performed two separate tests of LLNs, addressing each of the general categories of concern to CLECs. The first test (TVV 4-29) was designed to ensure that SBC Indiana issues LLNs where they are called for, and provides them on a timely basis. Using its own "Test CLEC" account, BearingPoint submitted numerous "CLEC to CLEC migration" orders designed to generate LLNs, and directed SBC Indiana to submit win-back orders designed to generate LLNs, and then waited to see if and when the LLNs were delivered. After the first iteration of the test, BearingPoint issued Exception 138, and SBC Indiana took corrective action. BearingPoint closed Exception 138 in November 2002 (after its re-test showed that SBC Indiana had successfully sent LLNs within one hour for 96.7% of the test transactions) and TVV 4-29 was satisfied. BearingPoint Operational Report at 935.

643. BearingPoint's second test (TVV 4-28) was designed to determine that the information on LLNs is accurate. BearingPoint examined over 780 commercial transactions that were expected to generate LLNs, and reviewed the resulting notifications. BearingPoint found that the LLNs for over 96% of the lines were accurate, and concluded that SBC Indiana accurately reports line loss activity. *Id.* at 709.

644. AT&T, WorldCom, and Z-Tel state that problems with LLNs have continued since the conclusion of Phase 2. SBC Indiana argues that the CLECs fail to analyze the LLN issue in light of SBC Indiana's overall performance. SBC Midwest transmitted over 600,000 LLNs to CLECs between August 2002 and January 2003, and

SBC Indiana points out that the complaints raised by the CLECs constitute only a small percentage of those LLNs, and even then, the problems were quickly caught and corrected. (SBC 1/8/03 Cottrell Reply Aff. ¶ 56.) As set forth below, between September 2002 and January 2003, SBC Midwest's performance in providing accurate LLNs has improved from 92.9% to 97.67%.

ALL CLECs	Total CLEC LLNs Provided	Inaccurate or Incomplete	% Successful
September 02	109,456	7,775	92.90%
October 02	155,424	403	99.74%
November 02	117,355	4,425	96.23%
December 02	115,937	3,061	97.36%
January 03	140,783	3,277	97.67%
5 Month Total	638,955	18,941	97.04%

645. SBC Indiana further discusses each of the LLN issues identified by the CLECs. SBC Indiana states that one issue raised by AT&T was resolved a year ago, in March of 2002. In addition, from August 15, 2002 until September 11, 2002, a problem with SBC Indiana's EDI translator tables caused some LLNs to be incorrectly routed to an error-handling queue rather than delivered to the appropriate CLEC. (AT&T DeYoung/Willard Aff. ¶¶ 100-106.) SBC Indiana became aware of the issue late in the day on September 10, 2002. SBC Indiana immediately investigated, determined the cause of the error, and fixed the problem the next morning, September 11, 2002. SBC Indiana states that it also issued an Accessible Letter to inform CLECs, and took several steps to monitor the situation and to prevent future occurrences. (SBC 1/8/03 Cottrell Reply Aff. ¶¶ 48-50.)

646. Next, on November 9, 2002, SBC Indiana implemented a new software release related to EDI version 5.02. (AT&T DeYoung/Willard Aff. ¶¶ 108-109.) As a result of the release, the "conversion date" field on certain LLNs was incorrect. These LLN errors occurred only on November 11 and the morning of November 12; after that, SBC Indiana put a "hold" on the LLNs to prevent further distribution of erroneous notices, and corrected the problem the evening of November 12, 2002. SBC Indiana also issued two Accessible Letters, on November 12 and 13, to apprise CLECs of the issue and its resolution. (SBC 1/8/03 Cottrell Reply Aff. ¶ 51.)

647. WorldCom states that SBC Indiana sends some line loss notices via e-mail. The Company explains that this happens only on the rare occasion where its systems are unable to mechanically generate an LLN. Between September 30 and November 30, 2002, SBC Indiana states, it sent WorldCom manual LLNs for only four telephone numbers. (SBC 1/8/03 Cottrell Reply Aff. ¶ 54.) Similarly, SBC Indiana states that it investigated WorldCom's claim that SBC Indiana failed to send LLNs for former accounts, and found that the issue affected only 1 percent of the total. (*Id.* ¶ 53.)

648. In sum, SBC Indiana concludes, these allegations do not demonstrate any material or systemic issues with SBC Midwest's LLN process. Rather, according to the Company, almost all of the CLECs' claims concerning missing or incorrect LLNs involved unique circumstances that are not likely to recur, affected only a single CLEC, or impacted only a small volume of LLNs. According to SBC Indiana, in many cases the actual delivery of the LLNs occurred, and the only issue was the manner of delivery or the format. Also, according to SBC Indiana, each issue was resolved quickly and in a reasonable manner. Considered in the context of the overall performance, and the successful results of the BearingPoint test on this issue, SBC Indiana states that its delivery of LLNs has been sufficient and nondiscriminatory.

Order Rejection Notices: Validity

649. SBC Indiana states that CLEC orders that are improperly formatted, or that do not contain necessary data, are returned to the requesting carrier with a rejection notice ("reject") so the requesting carrier can correct and re-submit its order.

650. AT&T and WorldCom allege that SBC Indiana improperly rejects some orders. AT&T contends that these invalid rejections stem from a violation of the Change Management Plan, and its contentions are addressed in the section on Change Management below.

651. SBC Indiana first responds that from January – March 2003, SBC Midwest's pre-order OSS processed over 690,000 transactions, and more than 136,000 service orders were created as a result of Local Service Requests ("LSRs") submitted via EDI, while over 520,000 service orders were created from LSRs submitted via LEX. (SBC Cottrell Rebuttal Aff. ¶ 2.)

652. The Company further asserts that BearingPoint comprehensively tested the proper treatment of CLEC orders. BearingPoint successfully tested nearly 100 ordering scenarios by submitting several thousand orders. SBC Indiana argues that the results of this testing confirm the satisfactory performance of SBC's ordering systems and service representatives regarding the editing of CLEC orders.

Order Rejection Notices: Timeliness

653. The performance standard in effect for November 2002 – January 2003 specified that SBC Indiana should return 97 percent of rejection notices within one hour for orders rejected electronically (PM 10.1), and within 5 hours for orders rejected manually (PMs 10.2 and 10.3). For electronic rejections, SBC Indiana states that it beat the standard in December but not in November or January; for manual rejections, SBC Indiana fell short of the standard in all three months.

654. According to SBC Indiana, the issue here is whether the numeric shortfalls are large enough to affect overall checklist compliance. SBC Indiana contends that they are not. In all three months, SBC Indiana issued well over 90 percent of electronic and manual rejections within the specified time frame. For the three months as a whole, SBC Indiana issued 95.6 percent of electronic rejections within one hour, and 92

percent of manual rejections within 5 hours (PMs 10.2 and 10.3 combined). Further, the average time to return rejections was approximately 8 *minutes* (0.13 hours) for electronic rejects (PM 11-01), and 4.7 and 3.8 hours respectively for manual rejects (PMs 11.1 and 11.2 combined), which shows that most rejections are processed well within the benchmark interval (XYZ), and that the small percentage of rejections that did not occur within the specified interval was not far from the standard. There has been no evidence that the small differences on a small percentage of rejects had any commercial impact. According to SBC Indiana, to the contrary, the CLECs agreed in the six-month review to extend the benchmark intervals to correspond to those for firm order confirmations (roughly speaking, two hours for electronic rejections and 24 hours for manual rejections), and SBC Indiana's results for the study period would have met those benchmarks. (SBC 3/14/03 Ehr Aff. ¶¶ 58-59.)

Ordering: Firm Order Confirmations

655. According to SBC Indiana, once a properly formatted CLEC order passes the initial edit checks, it provides the requesting carrier with a notice confirming receipt of a firm order. This notice is called a "firm order confirmation" or FOC. The speed of FOC issuance is measured against agreed benchmarks, which are tailored to reflect the method by which the order was submitted and input (manually or electronically), along with the product, size, and complexity of the order. (SBC 3/14/03 Ehr Aff. ¶ 48.)

656. SBC Indiana met or surpassed the benchmark in at least two of the three months during the study period for 18 of the 19 sub-measures of Performance Measure 5 (Percent Firm Order Confirmations (FOCs) Returned Within "X" Hours) for which sufficient data were reported. (*Id.* ¶ 49.) Over the study period as a whole, SBC Indiana returned 97.6% of the 99,452 FOCs associated with all order types within the specified interval. (*Id.*) BearingPoint found similar results in its independent test. SBC Indiana returned FOCs on BearingPoint's test orders within the specified interval for 99.7 percent of orders that were submitted and processed electronically, 96.4 percent of FOCs that were submitted electronically and input manually, and 95.8 percent of orders that were submitted manually. (BP Indiana May 2003 Report at 816-817, 820.) Based on this evidence, SBC Indiana contends that it issues these notices on a timely basis.

Ordering: Jeopardy Notices

657. According to SBC Indiana, a "jeopardy" notice informs the CLEC that SBC Indiana has discovered an issue that might affect its ability to provision the order on time. The due date might still be met; a jeopardy notice simply lets the CLEC know it might not be met. SBC Indiana argues that the shortfalls in some categories of PM MI 2 (the percentage of orders receiving jeopardy notices within 24 hours of the due date) are not material to overall compliance. Further, SBC Indiana states that the shortfall in PM MI 2 does not indicate discrimination. Part of the shortfall is attributable to the current "parity" standards. Because SBC Indiana does not issue jeopardy notices to its retail customers, the parity standard is based on a pseudo-measurement for retail orders that reflects what might be reported if jeopardy notices were actually provided. SBC Indiana states that current performance met the 5 percent benchmark (to which

CLECs have agreed in lieu of the current “pseudo-parity” standard). (SBC 3/14/03 Ehr Aff. ¶¶ 62-63.)

Ordering: Timeliness of Completion Notices

658. Upon completing a CLEC order, SBC Indiana sends the requesting carrier an electronic completion notice (also known as a “service order completion” or “SOC”). SBC Indiana measures the speed of issuing completion notices (i) from the time that the physical work of provisioning is complete (PM 7.1), and (ii) from the time the order is marked as complete in SBC Indiana’s ordering systems, which occurs shortly after work is done (PMs 7 & 8). The standard for PM 7.1 states that 99 percent of completion notices are to be issued within 24 hours of finishing physical work, while PM 7 specifies that 99 percent of completion notices are to be issued within an hour of completion in the electronic ordering systems. (SBC 3/14/03 Ehr Aff. ¶ 64)

659. SBC Indiana asserts that it provides the vast majority of completion notices on a timely basis. From November 2002 – January 2003, SBC Indiana met the 97% benchmark in all three months, and for resale, unbundled loops, and UNE combinations (which collectively comprise the vast majority of orders), SBC Indiana issued over 99.5 percent of completion notices within 24 hours of work completion in each month. (*Id.* ¶¶ 65-66.)

660. BearingPoint independently tested SBC Indiana’s completion notices by submitting over 1,000 test orders and reviewing the resulting completion notices. Approximately 96.6 percent were returned within one business day of the completion of work. However, based on additional statistical analysis, BearingPoint classified this test as satisfied (TVV 1-32). BearingPoint used the benchmark analogous to PM 7.1, which was modified in the 2002 6-month review. If one applies the revised business rules, 97.0 percent of completion notices were timely. BearingPoint Indiana May 2003 Report at 801-802.

Ordering: LSOG 5 Testing

661. AT&T claims that BearingPoint’s testing should have included the LSOG 5 interface. SBC Indiana responds that when BearingPoint began testing, the most recent version of SBC Indiana’s order and pre-order interfaces was based on version 4 of the industry standard Local Service Ordering Guide (“LSOG4”). LSOG 4 was therefore, quite logically, chosen as the version to be tested throughout the duration of the test. As the FCC has explained, “OSS functionalities are constantly evolving, and BOCs should not be penalized because substantially improved functionalities come on-line near the conclusion of the testing or after testing has already concluded.” (*Id.*)

Ordering: Flow-through

662. Flow-through relates to one step in the overall ordering and provisioning process: the translation of orders from the interface format to the format used by SBC Indiana’s downstream systems. The FCC has made clear that flow-through data “are not so much an end in themselves, but rather are a tool used to indicate a wide range of

possible deficiencies in a BOC's OSS." New York 271 Order, ¶ 162. Thus, a BOC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems is more relevant and probative for analyzing [its] ability to provide access to its ordering functions than a simple flow-through analysis." (Id.)

663. PM 13 measures flow-through as a percentage of orders that are designed or "eligible" to flow through. SBC Indiana explains that not all orders are designed to flow-through; by design, some orders (such as complex orders) are designed to require manual intervention. Thus, PM 13 shows whether the orders that are designed to flow through are, in fact, flowing through as intended. The FCC refers to this measure as "achieved" flow-through, and it has said that this is the "primary" measure of flow-through that it considers. New Jersey 271 Order, ¶ 32 ("We generally find the achieved flow-through measure is the most indicative of the BOC's ability to electronically process orders.").

664. SBC Indiana's commercial performance results show that it flowed through 95.26% of orders designed to flow through, and SBC Indiana asserts that the rate is superior to that provided by other BOCs whose section 271 applications have been approved. While acknowledging that the rates were slightly below the parity standard, SBC Indiana states that the differences were not material.

665. A second performance measure, PM 13.1, measures flow-through as a percentage of all orders, even those that are not designed to flow through. SBC Indiana states that its results on this measure were high (consistently above eighty percent for the highest volume category, UNE-P, and consistently above 76% across all categories combined).

666. BearingPoint found that SBC Indiana's flow-through documentation is clear, accurate and complete, and its testing showed that orders designed to flow through did flow through, at rates of 97.7 percent (for UNE-P orders), 95.4 percent (for unbundled loop orders), 99.3 percent (for local number portability ("LNP") orders), and 98.9 percent (for resale orders). SBC Indiana's flow-through results satisfied all five of the test criteria. BP Indiana May 2003 Report at 915-918. Further, BearingPoint found that SBC Indiana's process for manual input of orders that do not flow through are well defined and comparable to retail. SBC Indiana's manual order processes satisfied all seven test criteria. BP Indiana May 2003 Report at 613-626.

Commission Review and Conclusion: Ordering

667. The Commission defers the analysis of commercial results for the ordering component of Checklist Item No. 2 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC Indiana has met the nondiscrimination and meaningful opportunity to compete standards for the ordering component of Checklist Item No. 2 (including, but not limited to, whether or not SBC issues timely, accurate, and complete Post-to-Bill Notices).

3) Provisioning

668. SBC Indiana's commercial performance results for provisioning the various checklist items are discussed in conjunction with those checklist items. In short, the various performance measures address both the timeliness and reliability of provisioning. The principal measures of timeliness are the rate of missed due dates, the period of delay ("delay days") for any due dates that are missed, and the average installation interval. (SBC 9/26/02 Ehr Aff. ¶¶ 100-105.) The principal measure of reliability is the rate of "trouble" reported within 30 days of installation (also known as "installation trouble reports"), (*Id.*), which the FCC has found probative in past section 271 orders. New York 271 Order, ¶ 222.

669. SBC Indiana also computes a measure of "provisioning accuracy" (PM 12-01) which compares the features ordered on the LSR submitted through a mechanized interface and provisioned, to the copy of the order that updates the billing system. SBC Indiana achieved parity in two of the three months of the study period for that measure, with an accuracy rate on CLEC orders of 95.78% (compared to 95.5% for SBC Indiana's retail operations). According to SBC Indiana, the high rate of performance, coupled with low rates of installation trouble reports, show that SBC Indiana processes CLEC orders accurately. (SBC 3/14/03 Ehr Aff. ¶ 72.)

670. In the OSS test, SBC Indiana satisfied all 24 of 24 provisioning criteria tested.⁴⁶ BearingPoint performed an extensive review of actual provisioning transactions, including loop cutovers. BearingPoint determined that SBC Indiana provisions orders consistent with documented methods and procedures, on the due date, and in an accurate manner. BP Indiana May 2003 Report at 921-935. BearingPoint also determined that SBC Indiana did not disconnect the end user from its previous network, or remove the "switch translations" (which are used to direct incoming and outgoing calls to and from the end user's line) before the scheduled time of the cut. (*Id.* at 922.)

671. SBC Indiana notes WorldCom fails to provide evidence to substantiate or quantify its claims of inaccurate provisioning, and it fails to overcome the successful results of the OSS test and SBC Indiana's successful results on the primary measures of provisioning accuracy (installation trouble reports). See New York 271 Order, ¶ 174 (finding installation trouble reports more probative than a service order accuracy metric).

Commission Review and Conclusion: Provisioning

672. The Commission defers the analysis of commercial results for the provisioning component of Checklist Item No. 2 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for the ordering component of Checklist Item No. 2

⁴⁶ Five test criteria associated with dark fiber and Enhanced Extended Loop (EEL) installations were found "Indeterminate" due to a lack of commercial activity. (SBC 5/1/03 Cottrell Rebuttal Aff.) ¶ 10.)

4) Maintenance and Repair

673. As with provisioning, SBC Indiana's commercial performance results for maintenance of the various checklist items are discussed in conjunction with those checklist items. Generally, the principal measures of timeliness are the rate of missed commitments, the percentage of troubles cleared within a specified interval, and the average repair interval. The principal measure of reliability is the rate of "trouble" reported within 30 days of repair (also known as "repeat trouble reports"). (SBC 9/26/02 Ehr Aff. ¶ 120.)

674. BearingPoint conducted three comprehensive "end to end" reviews of SBC Indiana's procedures and performance for maintenance of wholesale and retail facilities: a transactional test of maintenance and repair functions, along with two transactional tests of the electronic interfaces that SBC Indiana offers to CLECs for maintenance functions. SBC Indiana satisfied 62 out of 63 test criteria, or 98.4 percent. BP Indiana May 2003 Report at 10.⁴⁷ Specifically, BearingPoint found that resale, UNE-P and loop trouble reports were processed with an on-time success rate equal to BearingPoint's test benchmark. (*Id.* at 979-980 and 986.) In addition, the mean time to repair also met BearingPoint's test benchmark for all product types. (*Id.* at 986, 989 and 992) BearingPoint also found that SBC Indiana accurately identified and repaired troubles for resale, UNE-P, loops and special circuits. (*Id.* at 981, 987 and 991) The sole "Not Satisfied" test point related to the "closeout" codes assigned to special circuit troubles (note that BearingPoint successfully tested codes for resale, UNE-P, and loops). (*Id.* at 992) SBC Indiana has taken additional action in that area, and accordingly contends that the issue does not affect overall compliance. (SBC 5/27/03 Comments at 13.)

Commission Review and Conclusion: Maintenance and Repair

675. The Commission defers the analysis of commercial results for the maintenance and repair component of Checklist Item No. 2 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for the ordering component of Checklist Item No. 2.

5) Billing

Billing: Timeliness

676. SBC Indiana provides usage information to CLECs for use in billing end users, and it issues wholesale bills to CLECs for the various products and services it provides them. There is no dispute as to the timeliness of usage or billing information. For the three-month study period, SBC Indiana claims that it issued all wholesale bills, and 99.77 percent of daily usage feeds, on time. (SBC 3/14/03 Ehr Aff. ¶ 77.)

⁴⁷ An additional 18 test criteria (associated with TVV6 volume testing) are included as part of the Maintenance and Repair domain in BearingPoint's summary of test results.

677. Performance Measure 17 addresses the rate at which service orders post to billing. SBC Indiana states that the applicable standard calls for SBC Indiana to measure the percentage of orders posted within 20 bill cycles, roughly 30 days. However, SBC Indiana advises that its reported results on billing completion reflect assessment against a higher standard: the percent of orders posting to billing within one bill cycle. Even so, SBC Indiana states, the percentage of wholesale orders posted within *one* cycle is very high. SBC Indiana adds that for the few orders that are not posted to billing prior to the first bill cycle for the account after the order completes in the ordering systems, there is no impact on a CLEC's ability to bill their end-customers. The SOC notice provides confirmation to the CLEC that the order is complete and the service is in place to their customer. Given (i) that over 90 percent of orders are posted much more quickly than the objective defined in the PM 17 business rule, and (ii) that, in SBC Indiana's opinion, posting does not affect the CLEC's ability to bill end users, SBC Indiana concludes that the shortfall in performance cited is not material to checklist compliance. Further, SBC Indiana contends that that no formal improvement plan is necessary, because as a result of the recently-completed six-month review collaborative, this measure will soon be revised. (SBC 3/14/03 Ehr Aff. ¶¶ 78-79).⁴⁸

Billing: Accuracy

678. BearingPoint conducted a test of billing accuracy. It analyzed approximately 2,600 rates appearing on carrier bills, including recurring and non-recurring charges for UNE-P, unbundled loops and resale, and verified that they were consistent with applicable tariffs and/or contract rates. (BP Indiana May 2003 Report at 1007-1008.) The accuracy rate met or exceeded BearingPoint's 95 percent benchmark in all six test categories, and the overall accuracy was 99 percent. (*Id.*) To test usage-based charges, BearingPoint made "test calls" and verified that SBC Indiana properly billed all the applicable normal and special usage charges and operator surcharges in accordance with business rules, tariffs, and/or contractual terms. (*Id.*) BearingPoint then tested 67 carrier bills (comprised of UNE-P, unbundled loops, and resale) and verified that every single calculation, total, and cross-total was correct. (*Id.*)

679. In addition, SBC Indiana asserts that the performance results of its own audits of wholesale bills are also positive. SBC Indiana states that there were no errors in the resale bills tested for November/December 2002 and January 2003, and that it met the applicable parity standard in all three months for UNEs. (SBC 3/14/03 Ehr Aff. ¶ 75.)

680. WorldCom and AT&T assert that some of the charges on their bills are either inappropriate or are assessed at the wrong rate. SBC Indiana responds that it does provide CLECs with accurate, timely and auditable billing and usage information in

⁴⁸ We note that parties are discussing a wide range of billing issues and billing measures in the current billing performance measure collaboratives. However, as of August 6, 2003, parties have not reached agreement on revisions to PM 17 – particularly on the existence and level of remedies.

compliance with the requirements of the Act. SBC Indiana further states that its bills are provided in industry standard format. (SBC 5/1/03 Cottrell Aff. ¶ 33.)

Billing Issues Related to the UNE-P

681. SBC Indiana disagrees with MCI that SBC Indiana has not complied with the February 17, 2003 Order in Cause No. 40611 S1 Phase II. SBC Indiana filed its proposed tariffs and revised cost studies in Cause No. 40611-S1 Phase II on March 19, 2003; CLEC Comments were filed April 21, 2003 and SBC Indiana's response was filed May 7, 2003. While SBC Indiana acknowledges certain errors in the original compliance filing (although not as many as the CLECs suggested), it has agreed to correct those few errors. As to the remaining Comments made in that proceeding, SBC Indiana's May 7, 2003 response filing states that it has properly implemented the Commission's order and that the CLECs Comments and misplaced or mistaken.

682. MCI also claims that it is being charged for certain UNEs in a manner that is not consistent with the SBC Indiana rate sheet or as indicated by SBC Indiana discovery responses. SBC Indiana asserts that any determination as to whether particular rates have been appropriately applied in a specific situation requires an analysis of that CLEC's binding contract or arrangement with SBC Indiana. According to SBC Indiana, the differences that MCI cites appear to be differences between the rates agreed to in its interconnection agreement with SBC Indiana, approved by the Commission, and the currently available tariffed rates. The FCC has repeatedly held that carrier-specific disputes about the proper construction of interconnection agreements have no place in a section 271 proceeding, but are to be resolved in state arbitration or complaint proceedings in the first instance. SBC Indiana states that the Commission should evaluate performance as a whole then rather than looking at individual disputes in isolation now. See Pennsylvania 271 Order, ¶ 26 (evaluating CLEC bills in dispute as a percentage of the whole rather than discussing individual disputes); Massachusetts 271 Order, ¶ 99 (emphasizing importance of the results of the OSS test as opposed to individual CLEC claims).

Billing and Line Loss Notices

683. SBC Indiana responded to AT&T's contention that the accuracy of its wholesale bills has been affected by the issues associated with the issuance of timely and accurate LLNs. SBC Indiana asserts that the LLN issue is well under control and that most of the problems have been addressed. (SBC 1/08/03 Cottrell Aff. ¶¶ 41-57).

Commission Review and Conclusion: Billing

684. The CLECs have raised issues regarding the adequacy of SBC Indiana's billing OSS and other billing problems.⁴⁹ The FCC also had significant concerns regarding billing accuracy and auditability for SBC Michigan, which concerns apparently

⁴⁹ Cause No. 41657, AT&T/MCI Proposed Order, Sect. VI.F., 82 – 84 (June 6, 2003); McLeod Proposed Order, Section 4 (June 6, 2003).

led, in part, to SBC's withdrawal of its Michigan III 271 application.⁵⁰ Very recently, the United States Department of Justice also expressed significant concerns regarding certain billing problems for SBC Michigan, especially about the possibility that certain SBC databases need to be synchronized:

The BearingPoint and E & Y tests show that SBC's billing programs themselves work well: when provided accurate information, the computerized billing programs create accurate bills. The problems may lurk at a deeper level, perhaps in the underlying databases from which bills are calculated and in the processes by which data is entered into and extracted from those databases. Michigan's performance metrics do not test for billing problems at this level. The problems at this level clearly will yield inaccurate bills. . . . Serious questions continue to be raised concerning the accuracy of SBC's wholesale billing. The record does not permit the Department to conclude that these concerns are insignificant or that they have been adequately addressed. Thus, the Department is not in a position to support SBC's [Michigan] application based on the current record. The Department recognizes that the Commission may have additional evidence at the time it completes its review, and that the Commission may then be able to determine that SBC's billing performance is adequate.

In re: Application of SBC for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-138, Evaluation of the U.S. Dept. of Justice, 8, 9 (July 16, 2003).

685. Because of the problems and concerns that numerous parties and entities have raised, we cannot dismiss these complaints out of hand. However, because we do not have any independent means of determining whether certain SBC databases do need to be synchronized or reconciled, and whether certain SBC processes do need to be updated or corrected, we cannot reach a conclusion at this time as to whether SBC has satisfied the billing requirements of Checklist Item No. 2. To the extent that either of these potential problems (failure to synchronize and reconcile data and records across multiple databases and systems, and failure to update or correct business processes for entering data into, and extracting data from, those databases) is not being addressed and corrected by, or on behalf of, SBC Indiana, we refer the problem(s) (is/ to the FCC and ask for assistance in ensuring that those problem(s) is/are, in fact, corrected. To the extent these and other billing accuracy and auditability problems are being corrected elsewhere, we formally request the FCC's assistance in ensuring that the corrections implemented elsewhere that resolve the underlying problems are also successfully implemented in Indiana. For example, we note that the Public Service

⁵⁰ Statement of FCC Michael Powell on Withdrawal of SBC's 271 Application for Michigan (rel. April 16, 2003).

Commission of Wisconsin recently opened a billing investigation.⁵¹ We ask the FCC's assistance in ensuring that billing-related corrective actions made by, or on behalf of, SBC Wisconsin as part of, or in response to, this billing investigation, are also made by, or on behalf of, SBC Indiana. In any event, we formally request the FCC's assistance in enforcing the successful implementation of whatever billing-related corrective actions SBC is required to take for, or on behalf of, SBC Indiana.

Change Management

686. "Change management" refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes to, the BOC's OSS system. New York 271 Order, ¶ 103. Periodic changes to OSS "may include operations updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities." Id.

687. The FCC has identified the following elements of a change management plan ("CMP") that give an efficient competitor a meaningful opportunity to compete: (1) evidence of competing carrier input in the design and continued operation of the change management process; (2) memorialization of the change management process in a basic document; (3) a separate forum for change management disputes; (4) a stable testing environment that mirrors production, and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway. California 271 Order, App. C, ¶ 42. "After determining whether the BOC's change management plan is adequate, the [FCC] evaluates whether the BOC has demonstrated a pattern of compliance with this plan." Id.

688. SBC Midwest satisfies all aspects of the FCC's test for an adequate change management process ("CMP"). Indeed, SBC Midwest's CMP is the same process that was in place when the FCC reviewed and approved Pacific Bell's California and Southwestern Bell Telephone's ("SWBT") Arkansas/Missouri application. (SBC 5/1/03 Cottrell Aff. ¶ 39. See also California 271 Order ¶ 96. According to SBC Indiana, that conclusion is confirmed by BearingPoint's third-party test, which, according to SBC Indiana, tested the adequacy and completeness of SBC Midwest's procedures for developing, publicizing, conducting, and monitoring change management, and found those items to be satisfactory.

689. According to SBC Indiana, BearingPoint's test also demonstrates SBC Indiana's overall pattern of compliance with the plan. BearingPoint found that SBC Midwest satisfied 98% (131 out of 133) of the applicable test criteria in the entire

⁵¹ Investigation into the Wholesale Billing Practices of Wisconsin Bell, Inc., d/b/a SBC Wisconsin, Docket No. 6720-TI-183, Notice of Proceeding and Investigation and Assessment of Costs and Prehearing Conference (mailed July 10, 2003).

Relationship Management domain with no "not satisfied" criteria, and satisfied all seven criteria specifically related to the CMP. BP Indiana May 2003 Report at 437-590.

690. AT&T alleges that SBC Midwest fails to comply with its 13 state change management process ("CMP"), and that SBC Midwest implements unannounced changes to its interfaces. SBC Indiana notes that the FCC has already reviewed this plan in its approval of the Arkansas/Missouri and California 271 applications, and found it sufficient. (SBC 5/1/03 Cottrell Aff. ¶¶ 38.)

PIC/LPIC Change

691. AT&T claims that it was impacted by unannounced changes to rules for populating certain fields related to the PIC and LPIC fields on the LSR. Mr. Cottrell explains the complicated facts behind this issue in his rebuttal affidavit. (SBC 1/08/03 Cottrell Reply Aff. ¶¶ 36-38.) On November 20, SBC Indiana made a programming change to both the LSOG 4.02 and the LSOG 5 versions of its interface, but inadvertently did not provide CLECs with notification of the LSOG 4.02 change in accordance with the CMP requirements. On November 25, 2002, AT&T advised that it was getting improper rejects when it included PIC/LPIC information on LSRs sent using LSOG 4.02. Effective November 27, 2002, the Company fixed the problem by making a programming change to bypass this edit for version 4.02 LSRs. While this first issue was being sorted out, SBC Indiana inadvertently changed AT&T's delimiters for LSOG 4.02. (Delimiters define a series within a transaction, thereby separating EDI data so that it can be interpreted). AT&T argues that this incident indicts the entire CMP. The Company acknowledges that this issue highlights the complexity of the interfaces and the potential for either party to make a mistake if processes are not followed and communication is not effective. (SBC 1/08/03 Cottrell Rebuttal Aff. ¶¶ 36-38.)

Other Interface Changes/Programming Issues

692. This Section discusses several issues that AT&T claims are the result of unauthorized changes made by the Company on its side of the interface. Mr. Cottrell asserted in his rebuttal affidavit that each incident was caused by an isolated human error or programming problem (according to Mr. Cottrell, sometimes attributable to AT&T) and does not establish any overall problem with the change management process. (SBC 1/8/03 Cottrell Rebuttal Aff. ¶ 33.)

693. For example, AT&T claims that SBC changed its coding in September to eliminate a space in information required to order a feature known as "Call Forward Busy/No Answer Number and Ring Count." AT&T claims that prior to this change, the information required to submit the order was sent as "'EVD' followed by a space, and then followed by the customers number and a backslash (/)...thus the information would be stated as EVD 12345678910/4." AT&T claims that programming by SBC improperly changed the ordering business rules to reject the order if a space was placed between "EVD" and the telephone number. SBC Indiana states that the errors that occurred with this issue were caused by AT&T not following EDI standards or established business rules. SBC Indiana asserts that, had AT&T submitted orders in accordance with the EDI

industry standards, its orders would not have been rejected. (SBC 1/8/03 Cottrell Rebuttal Aff. ¶ 33.)

694. Second, in November 2002, AT&T states that it began receiving rejects indicating that the LSR contained more telephone numbers than the applicable Customer Service Record (error code "H325"). AT&T contends that SBC Midwest was "improperly applying LSOG 5 edits to LSOG 4 orders." AT&T is incorrect, the Company says. This issue was caused by an improper turn-up if one system was appropriately addressed in a business-to-business forum. (SBC 1/8/03 Cottrell Rebuttal Aff. ¶ 34.)

695. Third, while AT&T claims SBC's improper application of LSOG 5 edits to LSOG 4 orders resulted in B103 (Invalid Listing Type: Non-Published, Non-Listed) error rejections, SBC Indiana asserts that AT&T is not correct. The Company states that, prior to LSOG 5, it was possible to have a secondary line be non-published and/or non-listed. While CLECs should not have been able to send orders to SBC Indiana in a non-published additional listing (although orders with non-listed numbers could be submitted), there was no edit in place to prevent them from doing so. In November, an edit was added to address the business rule, which caused AT&T's orders to err. SBC Indiana explains that it began to enforce established business rules and therefore rejecting orders with non-published additional listings that were not previously rejected. Because some of the AT&T orders were not formatted to meet the business rules, they were rejected. (SBC 1/8/03 Cottrell Reply Aff. ¶ 39)

Working Service in Conflict ("WSC") Process

696. AT&T complains that SBC Midwest implemented a new process without providing the notice allegedly required by the CMP. The Company says that AT&T is wrong because the working service conflict ("WSC") process did not involve any system changes that required implementation through the CMP. According to the Company, one CLEC asked SBC Midwest to develop a process to reuse facilities, thus eliminating the need for dispatch on new residential service. This required a process to determine whether services at the premise had been abandoned. SBC Midwest conducted a trial of the WSC process with the requesting CLEC for approximately 3 months prior to introducing it in the July 2002 Midwest CUF Regional meeting. Representatives from AT&T and WorldCom attended two industry meetings and did not object to the proposal.

697. AT&T claims that the WSC process falls under the CMP because it "specified changes to the LSR." This is wrong, the Company says, because this was a process change, which was carried out consistent with the change management processes, and not a system change. According to SBC Indiana, the major reason there was any impact in coding is that AT&T, on its own, made a business decision to "hardcode" some fields in the LSOR. (SBC 1/8/03 Cottrell Reply Aff. ¶¶ 27-35.) The Company states that it helped AT&T by manually processing AT&T's "backlog" of pending orders in a one-month time period.

LSR Review Board

698. AT&T challenges the BearingPoint Report on the grounds that the Local Service Request Review Board ("LRB") is not documented in the 13-State Change Management Process (13-State CMP) and was not agreed to by CLECs. The Company responds that the LRB is a committee made up of multiple departments within SBC whose primary function is to manage the internal change process. Such internal processes were never intended, nor should they be, part of the 13-State CMP or the subject of agreement with CLECs because SBC is responsible for managing its internal processes. Contrary to AT&T's claims, the LSR does not "overturn CLEC priorities". During the monthly CMP meetings, CLECs prioritize change requests. This prioritization is then provided to the LRB to take into consideration when packaging a release. The 13-state CMP, Section 8.3.3.8, states "...the prioritized list of CRs developed by the CLECs will be *considered* in the final SBC internal release planning session." (emphasis added). The Company states that it fully complies with this obligation. (SBC 1/8/03 Cottrell Rebuttal Aff. ¶ 41.)

Test Environment

699. AT&T contends that SBC Indiana fails to maintain an adequate test environment because the restrictions on use of the test environment prevent AT&T from ensuring that its own OSS will 'interact smoothly and efficiently' with SBC's. The Company responds that AT&T's claims are over-reaching. Mr. Cottrell attaches a copy of the 13-State CLEC Joint Test Plan ("JTP") to his January 8 Rebuttal Affidavit and states that SBC Midwest makes the joint test environment available to CLECs to test whether they have appropriately mapped to the EDI technical specifications and followed the LSOR business rules. The CLEC specifies its test cases and provides the Company a complete data package containing account information and the functionality to be tested. CLECs may send multiple orders daily; SBC will analyze five of those transactions per day unless otherwise negotiated. At any given time, anywhere from 7-15 CLECs test at the same time in the SBC Midwest region. (SBC 1/8/03 Cottrell Rebuttal Aff. ¶¶ 43-48.)

700. SBC asserts that the joint test environment (JTE) was not designed to facilitate a CLEC's testing within its own systems (i.e., AT&T's claim that it tests how its own "three back ends" and "multiple upstream systems" are working together appropriately).

LSOR Documentation

701. While AT&T raises several issues regarding "documentation", the Company explains that none of these issues rise to the level of an OSS problem. When AT&T argues that SBC Indiana's LSOG4 documentation is inadequate, (AT&T Ex. 1.0 (Connolly) ¶¶ 195, 197-202), it relies exclusively on a list of LSOG4 documentation issues that arose as a result of the normal and expected outcome of the BearingPoint test. Given that the purpose of a "military style" test is to find problems, fix them, and retest, the documentation improvements that occurred are strong evidence of the

adequacy of current LSOG4 documentation. AT&T also claims that Hewlett Packard ("HP") failed to fulfill its obligation under the Rules of Engagement when it did not issue observations or exceptions for certain issues. (AT&T Ex. 1.0 (Connolly) ¶¶ 195, 197-202, 217.) The Company points out that the Master Test Plan ("MTP") placed no requirement on HP to issue an observation or exception for every issue that arose during the test. The standard for issuing an observation or exception was that the issue "might result in a negative finding in the final report." While AT&T may have preferred that every issue that arose during the course of the test result in an observation or exception, thus lengthening the duration of the test, the MTP clearly places that decision in the hands of the qualified, independent judgment of HP and BearingPoint. (SBC 5/1/03 Cottrell Aff. ¶¶ 26, 29.)

Versioning and Line Splitting

702. The Company objects to AT&T's accusation that SBC Midwest uses versioning to impede, rather than benefit, CLECs' opportunity to compete. SBC Indiana points out that AT&T (along with other CLECs) requested the current versioning policy, and that SBC Indiana uses the same CMP and versioning arrangement that is used in all 13 SBC states – the same versioning policy that the FCC approved in SBC's Kansas/Oklahoma, Arkansas/Missouri, and California 271 applications. (SBC 5/8/03 Cottrell Reply ¶ 7.) SBC Midwest's policy requires a CLEC using a given Operating Company Number ("OCN") to consistently use the same version of the EDI interface when placing "line splitting" orders.

703. SBC Indiana notes that it and the CLECs negotiated the versioning issue on a collaborative basis. In supporting multiple versions, SBC Indiana states, it must have a method of identifying the CLEC and the version it uses, in order to apply the appropriate business rules and edits. The OCN was selected as the most logical means for identification. No CLEC requested that SBC Indiana vary the version by individual order rather than by company. Further, SBC Indiana advises that implementing the current versioning function in accordance with CLEC requests was costly, and that altering the Company's versioning arrangement now would be a long-term project and would involve a huge expenditure of time and resources for the Company. (SBC 5/8/03 Cottrell Reply ¶ 14.)

Commission Review and Conclusion: Change Management

LSOG 5 Issues

Some CLECs appear to have concerns regarding the documentation for LSOG 5.⁵² The underlying concern seems to be that SBC has not demonstrated that the numerous problems BearingPoint uncovered in LSOG 4 are not present, or will not reoccur in LSOG 5. We note at the outset that BearingPoint did not conduct transaction testing of LSOG 5, except for very limited testing of a few selected GUI transactions after the LSOG 4 GUI was retired. BearingPoint did not test LSOG 5 application-to-

⁵² Cause No. 41657, McLeod Proposed Order, Section 3 (June 6, 2003).

application interfaces for two reasons: (1) SBC had not implemented LSOG 5 when BearingPoint started testing; and (Because of the problems and concerns that parties have raised, we cannot reach a conclusion as to whether SBC has satisfied the change management requirements of Checklist Item No. 2) LSOG 5 app-to-app testing is not required under the Master Test Plan. Subsequent to the last scheduled transaction testing the Commission authorized the Test CLEC to ramp down⁵³, and has stated that further TVV and PPR testing is infeasible, unnecessary, or both. Therefore, further TVV testing is infeasible.

There is no way for the IURC to independently ascertain the existence, extent, or importance of any problems that may exist for LSOG 5 or future software releases.

The improvements to the functionality and availability of the JTE and the creation of a mirrored test environment that we are also asking the FCC to help enforce could also help both SBC and the CLECs to detect, and SBC to correct, problems in LSOG 5 and future releases.

Change Management Notification Issues

704. SBC Indiana has agreed to implement a Change Management Notification Plan that should provide some improvements to the overall management of the Change Management Notification process. As with the other compliance and improvement plans, we request the FCC's assistance in enforcing this plan.

Joint Test Environment (JTE)

705. CLECs have commented that the Joint Test Environment does not mirror the production environment, that SBC does not conduct adequate preliminary testing and prematurely declares the JTE "open" to CLEC use, and that SBC places some restrictions on the availability of the JTE.⁵⁴ These are all serious charges. Obviously, the IURC does not have first-hand experience in using the JTE. We further recognize that any changes to the JTE would likely have to be made on a 13-state basis or, at least, on a five-state basis for the SBC Midwest Region. Finally, we observe that the Test CLEC did submit some test transactions in the JTE to gain familiarity with SBC's systems. However, because JTE testing was not required under the BearingPoint Master Test Plan, there was no comprehensive testing of the JTE, and there were no specific Entrance or Exit Criteria that SBC had to meet in Indiana for the JTE. We request the FCC's assistance in improving the functionality and availability of the JTE and in ensuring that the Joint Test Environment adequately and accurately mirrors the production environment.

Versioning and Line Splitting

⁵³ IURC Cause No. 41657, Docket Entry (May 28, 2003).

⁵⁴ Cause No. 41657, McLeod Proposed Order, Section 3 (June 6, 2003).

706. According to the U.S. Department of Justice, SBC has agreed to implement a software upgrade in the March, 2004, LSOG release that will address CLECs' concerns.⁵⁵ There are preliminary indications that at least some CLECs may disagree with the DOJ that this agreed-to upgrade will, in fact, address their concerns.⁵⁶ We will monitor the filings in both the SBC Michigan 271 proceeding and the SBC four-state filing and take such action as we believe to be appropriate.

Summary

707. Because of the problems and concerns that parties have raised⁵⁷, we cannot reach a conclusion as to whether SBC has satisfied the change management requirements of Checklist Item No. 2. As discussed herein, we recommend that the FCC investigate the functionality of LSOG 5; and the functionality and availability of the JTE, the extent to which the JTE does or does not mirror the production environment, and the adequacy of internal testing that SBC Indiana may conduct prior to "opening" the JTE to CLECs for the CLECs' testing. We further recommend that the FCC take whatever steps are necessary to eliminate any major problems in these areas – including, but not limited to, enforcement actions to eliminate the possibility of backsliding by SBC Indiana. We also ask the FCC's assistance in ensuring and enforcing that changes to SBC's network, interfaces, systems, processes, and databases that affect the performance measure results, data, and systems (source systems, systems of record, and reporting systems (and, where applicable, intermediate systems)) are fully, accurately, and timely documented and that SBC provides sufficient, accurate, and timely documentation and notification of those changes to CLECs, and, for major changes, to the IURC staff, as well. It is unclear whether this last request would require modifications to the 13-state OSS Interface Change Management Plan.

6) UNE Combinations

708. SBC Indiana states that even with the substantial volume of CLEC UNE-P orders, it has provisioned UNE combinations on a timely basis, and with high quality installations and repairs. UNE-P orders fall into four categories: residential and business, with and without fieldwork. SBC Indiana states its performance results show better-than-parity performance for all three months for timely installations, installation trouble reports, time to restore service, and repeat trouble reports, with only a minor shortfall in one category with respect to average installation intervals. (SBC 3/14/03 Ehr Aff. ¶¶ 136-143.)

709. SBC Indiana notes that it met the parity standard for trouble report rates for all categories, and that CLEC trouble reports were cleared at parity in 7 of 8 reporting categories, with only a minor shortfall in the remaining category. (SBC 3/14/03 Ehr Aff. ¶¶ 144-148.)

⁵⁵ In re: Application of SBC for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-138, Evaluation of the U.S. Dept. of Justice, n. 50 (July 16, 2003).

⁵⁶ See, e.g., AT&T Reply Comments, n. 11, WC Docket No. 03-138 (July 21, 2003).

⁵⁷ Cause No. 41657, McLeod Proposed Order, Section 3 (June 6, 2003).

7) Overall Commission Review and Conclusion: OSS

710. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has, or has not, met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 2. For this reason, and because of the problems and the uncertainty noted in the introduction to Section VI.C., the Commission refers the analysis of the commercial results for Checklist Item No. 2 to the FCC.

3. CHECKLIST ITEM 3: Access to Poles, Ducts, Conduits, and Rights of Way

711. SBC Indiana states that it processed all CLEC requests for access to poles, ducts, conduits, and rights-of-way within the 35-day standard. (SBC 3/14/03 Ehr Aff. ¶ 83.)

712. No party provided any evidence of noncompliance with Checklist Item No. 3. The Commission is unaware of any disputes regarding Checklist Item No. 3 and therefore, concludes that SBC Indiana satisfies checklist item 3 by providing “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224.” 47 U.S.C. § 271(c)(2)(B)(iii). However, the Commission defers the analysis of commercial results for Checklist Item No. 3 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 3.

4. CHECKLIST ITEM 4: Unbundled Local Loops

713. Overall, SBC Indiana states, it met the applicable performance standard for over 97 percent of the performance measurement categories applicable to this checklist item in at least two of the three study period months for the three months of commercial data. (SBC 3/14/03 Ehr Aff. ¶ 87).

Stand-Alone Analog and Digital Loops

714. SBC Indiana states that its commercial performance results demonstrate that it provides CLECs nondiscriminatory access to stand-alone analog and digital loops. For 2-wire analog (8.0 dB) voice-grade loops, SBC Indiana states that it missed fewer due dates for CLEC orders than for its own retail orders, and, when due dates were missed, the resulting installation delays were also shorter on CLEC orders. (SBC 3/14/03 Ehr Aff. ¶ 123.) SBC Indiana adds that it met the parity standard in all three months for average installation intervals. (*Id.* ¶ 128.)

715. According to SBC Indiana, installation quality for analog loops (as defined by several trouble report measurements) was superior to that provided to retail customers. (*Id.* ¶ 131.) And when trouble was reported, SBC Indiana states, it achieved

parity in the mean time to restore service and for the rate of missed repair commitments. (Id. ¶¶ 132-135.)

716. SBC Indiana advises that its results for digital loops were similar. SBC Indiana's commercial performance results show that it easily met the parity standards for the timely provision of BRI loops (Id. ¶¶ 111-115) and, in at least two of the three months, for DS1 loops (Id. ¶¶ 116-122). SBC Indiana further notes that, for DS1 loops, it met the installation trouble report parity measure in every month, and repaired CLECs' DS1 loops faster than its own retail DS1 loops. (Id. ¶¶ 119, 122.)

Standalone xDSL-capable Loops and Line Sharing

717. SBC Indiana states that its performance results demonstrate that it provides CLECs nondiscriminatory access to standalone xDSL-capable loops. SBC Indiana's rate of missed due dates for standalone xDSL-capable loop orders never exceeded 0.85%, and was consistently better than the 5% benchmark. (SBC 3/14/03 Ehr Aff. ¶ 89.) For DSL loops, SBC Indiana consistently surpassed the 95% benchmark for installation intervals. (Id. ¶ 90.) As for the quality of installation, SBC Indiana reports that it met the 6% benchmark for installation trouble reports in each month in the study period. (Id. ¶ 97.)

718. SBC Indiana states that its overall rate of trouble reports was approximately 0.49 per 100 lines on DSL loops, and was substantially better than the 3% benchmark in each month. (Id. ¶ 100.) Further, for those lines that reported trouble, SBC Indiana states that it met the 9 hour benchmark for the mean time to restore service in every month. (Id. ¶ 103.)

719. With respect to line sharing, SBC Indiana states that it met the parity standard for line sharing installations completed within the customer-requested due date, and for the average installation interval for line sharing orders without conditioning, in each of the study period months. (Id. ¶¶ 91-92, 95.) SBC Indiana further explains that it met parity for line sharing trouble report rates. (Id. ¶¶ 98, 101.)

720. With respect to line splitting, we note that CLECs have raised numerous issues.⁵⁸ The DOJ observed for the Michigan IV application that SBC apparently has implemented, or agreed to implement, corrective actions for two of the line splitting problems: software versioning and loss of dial tone⁵⁹. The IURC understands informally that those two commitments are five-state commitments by SBC and are not specific to Michigan. We are also aware that CLECs continue to have many concerns regarding line sharing and line splitting issues throughout the SBC Midwest Region. We believe it appropriate to reserve judgment on the extent of the remaining line sharing and line splitting problems for SBC Indiana, and any corrective actions that may be needed, until

⁵⁸ Cause No. 41657, AT&T/MCI Proposed Order, pp. 91 – 97, 99 – 112 (June 6, 2003).

⁵⁹ In re: Application of SBC for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-138, Evaluation of the U.S. Dept. of Justice, Sect. II.B., p. 11 & n. 50 (July 16, 2003).

after we have had a chance to review some of the comments in the SBC Midwest “four-state” proceeding, WC Docket No. 03-167. We will continue to pursue various other line sharing and line splitting actions that we have required SBC Indiana to undertake.

5. CHECKLIST ITEM 5: Unbundled Local Transport

721. During the November 2002 – January 2003 study period, SBC Indiana states that it met every applicable performance standard for unbundled transport. (SBC 3/14/03 Ehr Aff. ¶ 149.) SBC Indiana states that none of the approximately 40 DS3 circuits in place experienced any trouble in the three-month study period. (*Id.* ¶150.)

722. No CLEC raised any issues in Phase 3 specific to checklist item 5. No party disputes SBC Indiana’s nondiscriminatory provisioning and maintenance of unbundled local transport. However, because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has, or has not met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 5. For this reason, and because of the problems and the uncertainty noted in the introduction to Section VI.C., the Commission refers the analysis of the commercial results for Checklist Item No. 5 to the FCC.

6. CHECKLIST ITEM 6: Unbundled Local Switching

723. While CLECs have not ordered new stand-alone unbundled switch products during the September-November-January period, SBC Indiana states that it has the same processes in place for standalone local switching as for other wholesale products, including UNE-P. (SBC 3/14/03 Ehr Aff. ¶ 151.) No CLEC raised any Phase 3 issues with respect to checklist item 6. Thus, the Commission is aware of no reason to conclude that SBC Indiana does not satisfy the requirements of checklist item 6. The Commission defers the analysis of commercial results for Checklist Item No. 6 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 6.

7. CHECKLIST ITEM 7: 911, Operator Services, Directory Assistance

a. 911 and E911

724. SBC Indiana states that the November 2002 – January 2003 performance results show that it provides CLECs nondiscriminatory access to its 911 database. (SBC 3/14/03 Ehr Aff. ¶ 153). In every month in the study period, SBC Indiana achieved parity in processing CLEC corrections to 911 database records. (*Id.*) According to SBC Indiana, the average time to process corrections was 1.52 hours for CLEC records, compared to 5.37 hours for retail. (*Id.*)

725. With respect to the average time to process 911 updates for CLECs, SBC Indiana notes that it met the parity standard (PM 104) in all three months, processing CLEC updates in less than an hour, well within the 24-hour standard established by the National Emergency Number Association. (*Id.*).

726. No CLEC raised any issues in Phase 3 with respect to 911 and E911.

727. Under checklist item 7, SBC Indiana must “provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity,” and must “maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.” California 271 Order, ¶ 57 (quoting Michigan 271 Order, ¶ 256). The Commission concludes that SBC Indiana satisfies the requirements of checklist item 7 with respect to 911 and E911. SBC Indiana’s commercial performance results show that SBC Indiana updates CLEC 911 records and clears CLECs’ 911 database errors at parity with (or more quickly than) retail.

b. Directory Assistance/Operator Services

728. SBC Indiana states that it surpassed the benchmark for average speed of answer for OS and DA calls, in every month. (SBC 3/14/03 Ehr Aff. 154). SBC Indiana’s commercial performance results show that all electronic DA database updates flowed through without manual intervention during the study period, thus meeting the applicable parity standard. (*Id.* ¶ 157). For manually submitted updates, SBC Indiana achieved a high rate of accuracy, with no errors, thus beating the benchmark of 97%. (*Id.* ¶ 156). BearingPoint also tested the accuracy of SBC Indiana’s DA database updates, and found that SBC Indiana satisfied the 95% test benchmark (TVV4-1).

729. SBC Indiana states that it completed 100% of all CLEC DA update orders within 72 hours. (SBC 3/14/03 Ehr Aff. ¶ 155). The average time to update the DA database for CLEC electronic update orders was approximately 19 hours – well within the benchmark of 48 hours. (*Id.*).

730. No CLEC raised any issues in Phase 3 specific to directory assistance or operator services.

731. Checklist item 7 also requires SBC Indiana to demonstrate that it provides CLECs “nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier’s customers to obtain telephone numbers; and (III) operator call completion services.” See 47 U.S.C. § 271(c)(2)(B)(vii).

732. The Commission defers the analysis of commercial results for Checklist Item No. 7 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 7.

8. CHECKLIST ITEM 8: White Pages Directory Listings

733. As shown above, SBC Indiana satisfies the requirements of checklist item 8. There is no dispute as to SBC Indiana’s performance with respect to that checklist item, and accordingly SBC Indiana contends that the Commission should affirm its finding of checklist compliance.

734. No CLEC addressed checklist item 8 in Phase 3.

735. As no dispute was raised with respect to checklist item 8 in Phase 3, the Commission is unaware of any reason to find that SBC Indiana does not satisfy the requirements of this checklist item. The Commission defers the analysis of commercial results for Checklist Item No. 8 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 8.

9. CHECKLIST ITEM 9: Numbering Administration

736. SBC Indiana states that the performance results for checklist item 9 demonstrate that SBC Indiana provides nondiscriminatory access to telephone numbers. Fifty NXXs were assigned to CLECs during the three-month study period, and SBC Indiana loaded all of those NXXs into its switches, and tested each NXX, before the effective date. (SBC 3/14/03 Ehr Aff. ¶ 158). Further, there were no reported troubles. (*Id.*).

737. No CLEC addressed checklist item 9 in Phase 3.

738. There is no dispute with respect to this checklist item. Therefore, the Commission is unaware of any reason to conclude that SBC Indiana does not satisfy the requirements of checklist item 9. Nonetheless, the Commission defers the analysis of commercial results for Checklist Item No. 9 to the FCC for a final determination of SBC Indiana's compliance or non-compliance,. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 9.

10. CHECKLIST ITEM 10 - Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion

739. BearingPoint conducted a processes and procedures review of SBC Indiana's Advanced Intelligent Network ("AIN") and SS7 surveillance. BearingPoint concluded that SBC Indiana satisfied the relevant criteria by adequately monitoring AIN and SS7 interconnection activity and logging, categorizing, and tracking network alarms. BP Indiana May 2003 Report at 765-779.

740. As there were no issues raised in Phase 3 with respect to checklist item 10, the Commission concludes that SBC Indiana satisfies the requirements of checklist item 10. Accordingly, the Commission concludes that SBC Indiana satisfies the requirements for Checklist Item No. 10, subject to the earlier prohibition described in Section VI.B. on charging CLECs twice for using SBC's SS7 network for per query access to the CNAM database.

11. CHECKLIST ITEM 11: Number Portability

741. SBC Indiana asserts that it met or exceeded the applicable performance standard in at least two of the three months for all of the measurements associated with this checklist item. According to SBC Indiana, during the three months as a whole, SBC Indiana ported over 17,000 numbers, and achieved the following results:

(i) SBC Indiana ported over 100 percent of numbers within intervals specified by industry guidelines for complete and partial LNP conversions, beating the 96.5 percent benchmark in each month (SBC 3/14/03 Ehr Aff. ¶ 159 & Att. K, PMs 91-01 and 91-02);

(ii) SBC Indiana ported numbers, on average, with only 5.3 minutes out of service (Id. ¶ 159); and

(iii) SBC Indiana maintained high quality, with no lines reporting trouble within 30 days of porting (Id. ¶ 161).

742. BearingPoint included LNP requests in the mix of test orders it submitted to SBC Indiana for processing, and it tested orders for LNP alone, for loops with and without LNP, and for EELs with and without LNP. BearingPoint found that SBC Indiana issued timely and accurate order confirmations for LNP and loop with LNP orders; “flowed through” over 99 percent of LNP orders in accordance with published flow-through documentation; started work on all loop-with-LNP cutovers within 30 minutes of the scheduled cutover time, and completed provisioning of over 99 percent of the cutovers within 60 minutes (for orders less than 10 lines) or 120 minutes (for orders between 10 and 24 lines). BearingPoint also determined that in porting numbers, SBC Indiana did not prematurely disconnect *any* switch translations prior to the scheduled conversion time; and that, consistent with industry guidelines, SBC Indiana applied the 10 digit trigger (a preliminary step to porting the number) on the day before the due date for 99.0 percent of the 421 LNP lines observed. BP Indiana May 2003 Report at 918-926.

743. No CLEC addressed checklist item 11 in Phase 3.

744. SBC Indiana has implemented LNP in all of its switches in Indiana, and SBC Indiana's commercial performance results and the results of OSS testing confirm that SBC Indiana satisfies the requirements of checklist item 11. The Commission defers the analysis of commercial results for Checklist Item No. 11 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 11.

12. CHECKLIST ITEM 12: Dialing Parity

745. According to SBC Indiana, there are no Commission-approved performance measures related to checklist item 12, and BearingPoint was not directed to test performance with respect to local dialing parity. In any event, SBC Indiana

observes, no CLEC addressed Checklist Item No. 12 in Phase 3, and there are no disputed issues regarding SBC Indiana's compliance with checklist item 12. Accordingly, the Commission concludes that SBC Indiana satisfies the requirements of checklist item 12.

746. The Commission concludes that SBC Indiana satisfies the requirements of checklist item 12. The Commission defers the analysis of commercial results for Checklist Item No. 12 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 12.

13. CHECKLIST ITEM 13: Reciprocal Compensation

747. As demonstrated above, SBC Indiana has entered into numerous legally binding interconnection arrangements that satisfy the requirements of checklist item 13. SBC Indiana further notes that, while some CLECs disputed future reciprocal compensation arrangements in Phase 2 (and those disputes were resolved in favor of SBC Indiana), no party has disputed SBC Indiana's performance with respect to its existing reciprocal compensation obligations. There are no Commission-approved performance measures for this checklist item, and BearingPoint was not directed to test in this area. Thus, SBC Indiana contends that it has satisfied the requirements of checklist item 13.

748. We also note that no CLEC addressed Checklist Item No. 13 in Phase 3, and no party has raised any dispute in Phase 3. Furthermore, as there are no performance measures for reciprocal compensation, and as no party alleged discrimination, we also find that SBC Indiana has complied with the nondiscrimination requirements for Checklist Item No. 13, as well.

14. CHECKLIST ITEM 14: Resale

749. SBC Indiana states that its commercial performance results, as well as the results of BearingPoint's test, demonstrate that it provides CLECs resold services in accordance with the requirements of checklist item 14. SBC Indiana states that it met the applicable standards for all performance measures in this area in at least two of the three months of the study period, and for several key measures, SBC Indiana states that its performance for resold service was better than retail in every month. SBC Indiana installed resale service faster, and with fewer missed due dates, than retail in all four main service categories (residential and business, with and without field work). (SBC 3/14/03 Ehr Aff. ¶¶ 163-165.) Further, SBC Indiana notes that the rate of trouble reports on new resale installations was at or better than parity. (Id. ¶¶ 166, 168.)

750. SBC Indiana states that it achieved similar success in maintenance. On average, SBC Indiana repaired resold lines more quickly than retail in every month, across every category of service. (Id. ¶¶ 168-169.)

751. BearingPoint found that SBC Indiana provides high quality service with respect to the timely issuance of resale order confirmations, resale order flowthrough, and resale line repairs. BearingPoint's transaction testing included 14 different resale scenarios and BearingPoint also included resale bills in its billing tests. BearingPoint's review of processes and procedures included those applicable to resale. BearingPoint's findings include:

- + SBC Indiana issued 99.7 percent of order confirmations within 2 hours for electronically input orders (Table 1-14), and 96.4 percent of order confirmations within 5 hours for manually input orders (Tables 1-15);
- + SBC Indiana repaired resold lines quickly, with an average interval of 15.6 hours (TVV 7-5) and an on-time rate of nearly 96.9 percent (TVV 7-2) for resale and UNE-P repairs; further, SBC Indiana repaired 95.5 of lines within 24 hours (TVV7-4); and
- + BearingPoint evaluated 80 repairs, and found that SBC Indiana accurately identified and fixed the trouble 96.3 percent of the time (TVV 7-3).

752. The Commission notes that there is little dispute about the majority of SBC Indiana's commercial performance results on this checklist item. Many measures show that the resold services that SBC Indiana provides CLECs are at least equal in quality to its own retail services, if not higher in quality. The few shortfalls were immaterial and isolated to a single month, and do not affect SBC Indiana's compliance with this checklist item.

753. The Commission defers the analysis of commercial results for Checklist Item No. 14 to the FCC. Because of the incomplete status of the BearingPoint PM Audit, the IURC cannot reach a conclusion regarding whether SBC has met the nondiscrimination and meaningful opportunity to compete standards for Checklist Item No. 14.

D. Compliance with, and Implementation of, A-AA List of OSS Enhancements and Modifications

754. On July 11, 2000, the first collaborative workshop in Cause No. 41657 was held. During this initial workshop, the parties agreed on a Statement of Principles that was based upon a similar statement developed in Wisconsin. Also, the parties agreed upon an approach to address a number of product, process and OSS issues that are being addressed in Michigan, Ohio and Wisconsin, in a manner that brings the benefits of those enhancements to Indiana in the same time and manner. Finally, the parties agreed to a proposed procedural process for this proceeding.

755. In the several months prior to this first workshop, CLEC and SBC representatives had been meeting in Ohio, Michigan and Wisconsin on the same issues. During the course of these meetings, the parties identified the issues that they agreed must be addressed as part of the Commission's review of OSS, performance measurements and remedies to take place in Cause No. 41657. The parties had

reached agreement in Michigan and a formal agreement in Wisconsin on the appropriate procedure to follow for all of these "A-AA issues". A description of the issues and an issues matrix were developed by the parties in other states.

756. Many of the issues documented with the first Joint Progress Report were considered resolved, subject to implementation and third party testing, but others were subject to a review of additional information and further negotiation. In subsequent collaborative meetings, both in Indiana and in other SBC Midwest states, as documented in the Second Joint Progress Report dated October 23, 2000, the Third Joint Progress Report dated January, and the March 13, 2001 Fourth Joint Progress Report, the parties addressed the remainder of the A-AA issues.

757. The parties to this Cause agreed that the A-AA issues needed to be "included in the master test plan" and BearingPoint, at the direction of the collaborative and Commission Staff, developed Appendix F to the Master Test Plan, which mapped the various A-AA modifications and enhancements to the applicable test within the BearingPoint Evaluation. In the A-AA Verification Summary included in its February 28, 2003 and May 12, 2003 reports⁶⁰, BearingPoint provided the results of its verification of many of the A-AA enhancements. In the May 12, 2003 report, of the enhancements subject to verification by BearingPoint, 220 were determined to be "Verified" and five as "Unable to Verify".

758. In its A-AA Verification Summary, BearingPoint also identified certain enhancements as "C" items. Items designated as a "C" item were not verified by BearingPoint because compliance was to be verified by the Commission. On March 18, 2003, SBC Indiana filed a matrix showing SBC Indiana's compliance with each item designated with a "C" through a reference to material previously submitted as part of SBC Indiana's Checklist Filings or by the three supplemental affidavits filed included with the matrix.

1. Parties' Positions

a. SBC Indiana position

759. SBC Indiana has indicated that it believes all of the A-AA enhancements have been properly addressed. It points to its March 18, 2003 filing and the associated cited affidavits for evidence of compliance with those enhancements to be verified by this Commission. SBC Indiana also references the BearingPoint A-AA Verification Summary as evidence of successful completion of those enhancements subject to verification through the third-party test.

⁶⁰ See BearingPoint Indiana "Interim OSS and Performance Measurement Status Report," dated February 28, 2003, at 1011 – 1105 and BearingPoint Indiana "Interim OSS and Performance Measurement Status Report," dated May 12, 2003, at 1021 – 1115.

b. CLECs and OUCC position

760. The OUCC identified 14 items on the A-AA issues list the "have not been assessed by BearingPoint . . . signaling the need for further IURC review of SBC's compliance." The OUCC addressed the items in the "Not in Testing Scope" category by stating that proof of SBC's compliance will come from SBC and the CLECs, not from BearingPoint. The OUCC concludes its comments on A-AA issues by indicating that it must defer to participating CLECs to comment in greater detail on SBC's compliance with each of the commitments made in the 'A-AA' issues list. See Indiana Office of Utility Consumer Counselor's Comments on SBC's "A-AA" Issues List Filing and BearingPoint's Interim Report on OSS Testing," dated April 17, 2003, at pp. 2-3.

761. AT&T, in its comments, states that the Master Test Plan Global Exit Criterion requires BearingPoint to complete testing of all the negotiated modifications and enhancements that were designated as test subjects on the A-AA list. AT&T further states that "BP report shows incomplete testing of the A-AA list of items detailed in Table III-5 of the Master Test Plan and in Appendix F to the Master Test Plan." See AT&T 4/17/03 Connolly Aff. ¶¶ 56-58.

c. SBC Indiana Reply

762. SBC Indiana responded to the OUCC comments by stating that of the five criteria identified by the OUCC as not assessed by BearingPoint, four were inapplicable since they involved stipulations by SBC Indiana to take certain actions dependent upon pre-conditions that never materialized (C3-S1, G-S15.0, L4-S7 & Q1-S5). SBC 5/27/03 Comments at pp. 13-16.) SBC Indiana also stated that the other criterion (R-S1.0) identified by BearingPoint as "Not Verified" was associated with test criteria TVV1-3 and Observation 698, which was successfully retested and closed for Indiana on April 8, 2003.⁶¹ Further, SBC Indiana indicates that information contained within the Checklist Phase II affidavits of witnesses Kniffen-Rusu and Valentine provide evidence of compliance with the nine items identified by BearingPoint as not within the scope of OSS testing ("X" items). Finally, pointing to the supporting affidavits together with the BearingPoint A-AA Verification Summary, SBC Indiana indicates that it has successfully resolved all A-AA issues and no further action by this Commission is required.⁶²

2. Commission Analysis and Conclusions.

763. SBC Indiana has indicated its compliance with the A-AA issues identified by BearingPoint as requiring verification by the Commission ("C" items) or not within the scope of testing ("X" items) through affidavits filed with its September 26, 2002 Phase Two Checklist Informational Filing and with its March 18, 2003 SBC Indiana's Notice of Filing of Compliance With "A-AA" Issues That Were Not Verified By BearingPoint. In comments filed by CLECs and the OUCC on April 17, 2003 in response to the Commission's request for comments regarding SBC Indiana's

⁶¹ See Affidavit of Mark J. Cottrell on Behalf of SBC Indiana," dated May 1, 2003, at page 15.

⁶² Id. at 16.

compliance with A-AA items, no comments were received questioning or contradicting SBC Indiana's compliance with these items. Consequently, the Commission will require no further action from SBC Indiana with regard to these A-AA items requiring verification by the Commission or not with the scope of testing.

764. Neither CLECs nor the OUCC commented on any item successfully verified by BearingPoint. Their comments were limited to those items subject to verification by BearingPoint that were not determined to have been verified – one item that was “Not Verified”, four designated as “Unable to Verify”, and nine determined to not be within the scope of OSS testing. The last of these, those determined to not be within the scope of the OSS test, we discussed above. We understand that the one item designated as “Not Verified” has since been successfully verified by BearingPoint as documented by the closure of Observation 698 and of test criterion TVV1-3 in the May 12, 2003 BearingPoint Report.

765. We turn now to the four remaining enhancements, which are those that BearingPoint determined it was unable to verify. We have reviewed the explanations advanced by BearingPoint and by SBC Indiana for these items not being verified, and find that no further action is required of SBC Indiana or this Commission regarding items C3-S1, G-S15.0, and Q1.S5. We understand that the issue of CLEC-to-CLEC migrations underlying item G-S19 is being discussed by CLECs and SBC Indiana through the CLEC User Forum (“CUF”). Since no CLEC participating in this proceeding objected to the present status of this item in their comments regarding A-AA items, we assume that parties believe this issue can be resolved through the processes of the CUF and require no additional action on the part of SBC Indiana. For item L4-S7, we find that the performance measure six-month review process provided adequate opportunity for introduction and discussion of proposed new performance measures and find no adverse comments from CLECs participating in this proceeding regarding this item. Although we require no additional action by SBC Indiana regarding this item at this time, we note that CLECs are not precluded from requesting the consideration of such a performance measure through the appropriate process provided through future six-month reviews.

766. In summary, we find that the SBC Indiana has complied with the stipulations embodied in the A-AA list and require no further actions other than those outlined above of SBC Indiana regarding those stipulations.

E. Public Interest Review

1. Description of the Statute

767. With respect to a Section 271 application under its review, the FCC “shall not approve the [Section 271] authorization requested in an application ... unless it finds that:

“the requested authorization is consistent with the public interest, convenience and necessity.” 47 U.S.C. Section 271 (d)(3)(C).

2. The Federal Standards

768. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the FCC to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity. According to the FCC, compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the FCC's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

769. The FCC recognizes, however, that the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination. Thus, the FCC views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.

(Section Adapted from the New Jersey 271 Order, with most cites and footnotes omitted).

3. The Parties' General Views and Positions

a. SBC Indiana Position

770. The public interest analysis does not appear under Section 271 (c), SBC Indiana observes, but resides in subsection (d), which assigns the public interest inquiry to the FCC. As such, according to SBC Indiana, the "public interest" test does not authorize a state Commission to create new regulations or conduct new inquiries not related to the checklist compliance provisions of the federal statute.

771. So too, SBC Indiana asserts, the public interest test is not a second chance for arguments that fail under Track A or the competitive checklist. According to SBC Indiana, It would make no sense for the FCC to say that some proposal (e.g., a market share test for Section 271 approval) is a bad idea under Track A or the checklist, then turn around and deem that same proposal to be compelled by the "public interest and necessity." Compare Michigan 271 Order, 77 ("We also do not read [Track A] to require that a new entrant serve a specific market share") with New York 271 Order, 427 ("Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here [under the public interest test].")

772. The FCC, SBC Indiana asserts, has recognized that Section 271 proceedings are not the place to resolve "new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act." Texas 271 Order, ¶ 23. As the FCC reasoned, such an approach would be "irreconcilable with th[e] statutory scheme" because "the

Section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a Section 271 application.” *Id.* ¶ 24. One reason that such inquiries are improper is the FCC’s tight time limit for reviewing applications (*Id.* 25), but that is not the only one. SBC Indiana observes the FCC to explain that:

Congress designed Section 271 to give the BOCs an important incentive to open their local markets to competition, and that incentive presupposes a realistic hope of attaining Section 271 authorization. That hope would largely vanish if a BOC’s opponents could effectively doom any Section 271 application by freighting their Comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC’s favor. Indeed, if that were the required approach, the BOCs would face enormous uncertainty about the steps they need to take to win Section 271 authorization, and they would therefore lose much of their incentive to cooperate in opening their local markets to competition in the first place. That result would disserve the public interest in greater competition in both local and long-distance markets, and it would defeat the congressional intent underlying this statutory scheme. Texas 271 Order ¶ 26.

773. Finally, SBC Indiana argues, it is not enough for a party to suggest certain action and claim that such action is in the public interest, simply because it is in that party’s interest or otherwise warranted on the conclusory assertion that the market is not irreversibly open. The issue, SBC Indiana maintains, is whether granting the BOC’s application would be in the public interest, not whether adopting a particular CLEC proposal might also serve the public interest. 47 U.S.C. § 271(d)(3)(C). On that issue, SBC Indiana observes, the FCC considers whether “relevant factors exist that would frustrate the congressional intent that markets be open,” and whether that approval would not serve the public interest Congress expected it to serve. (New Jersey 271 Order, App. C, 71).

b. WorldCom’s Position

774. WorldCom states that this Commission’s responsibility to consult with the FCC on 271 compliance requires that it do more than just determine whether SBC Indiana is in minimal, technical compliance with the fourteen checklist items.

c. AT&T’s Position

775. The level of local competition that currently exists, AT&T contends, is narrowly focused and uncertain. According to AT&T, the same arguments it set forth under Track A eligibility also demonstrate that SBC Indiana has failed to meet its burden of proving that the “local market is open and will remain so” even after Section 271 authorization is granted. See Michigan 271 Order.

776. For local competition that is both sustainable and irreversible, the FCC and the state commission must assure themselves that the RBOC will continue to comply with the market-opening requirements, even after the “carrot” of 271 relief no longer exists. There is no question, AT&T maintains, but that an adequate Performance Remedy Plan is crucial to ensure that SBC Indiana does not “backslide” on the service quality it provides to CLECs. Another readily available way that the FCC and the state commission can alleviate any concerns about whether the RBOC will comply with the market-opening requirements of the FCC and the state commission is to examine the RBOC’s history of compliance.

d. OUC Position

777. The OUC points to the IURC’s analysis of the development of competition in Indiana’s local exchange market, as documented in the IURC’s Annual Reports to the Regulatory Flexibility Committee as an indication that Indiana is significantly behind other states in the development of competition in the local exchange market.

778. Similar to AT&T, OUC argues that an adequate remedy plan is crucial to create a deterrent effect on RBOCs to prevent post-271 backsliding on OSS performance measures.

e. Time Warner Position

779. Time Warner urges the Commission to consider at least three factors in its assessment of whether recommending that SBC Indiana receive Section 271 approval: whether SBC Indiana’s provisioning of wholesale service is on parity for all types of services; whether SBC Indiana has demonstrated that it complied and will continue to comply with market opening conditions; and, whether SBC Indiana has satisfied the safeguards required for its long distance affiliate.

4. IURC Public Interest Analysis – General

785. While SBC Indiana is correct that the FCC is not specifically required to consult with the IURC on whether SBC’s Section 271 application for Indiana is consistent with the public interest, convenience, and necessity, the IURC is submitting its views in this regard, as a statutory party to the FCC’s proceeding.

5. Specific Proposals for Meeting the Public Interest

a. To Freeze or “Cap” Rates (Wholesale Products)

i. WorldCom Position

786. WorldCom recommends that the Commission cap the TELRIC rates that will come out of Cause No. 40611-S1 for five years so that SBC Indiana cannot receive

Section 271 approval based on those rates and then collaterally attack them by immediately seeking to institute a new TELRIC Docket.

ii. SBC Indiana Position

787. Many of the Comments on pricing, SBC Indiana observes, do not contest the Commission-approved rates for unbundled access and interconnection, but simply complain that the Company might someday propose higher rates. According to SBC Indiana, however, the analysis under Section 271 focuses on the rates that are in effect, not on rates that might someday be proposed.

788. Here, SBC Indiana notes WorldCom to suggest that rates be capped at current levels for five years. But, SBC Indiana contends, the 1996 Act does not require that rates be fixed for any particular period of time. It does require, however, that the rates be right, i.e., based on cost. In SBC Indiana's view, a cap that would preclude SBC Indiana from proposing, and the Commission from considering, adjustments to rates, is contrary to the Act's mandate. SBC Indiana argues that costs inevitably change and evolve over time as new data is gathered and models are updated in the normal course of business. The FCC has itself recognized that "rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions." Massachusetts 271 Order, ¶ 36. The 1996 Act does not say that prices must be "certain" or fixed for any particular period of time. It does say that prices are to be "based on cost." 47 U.S.C. § 252(d)(1). A cap on rates necessarily means that prices are to be held at a certain level even if SBC Indiana proves (and even if the Commission, absent a cap, would agree) that the existing rates are not based on cost, and are, therefore, no longer lawful. The only "uncertainty" that carriers face is that they may someday be legally obligated to pay prices that are right (i.e., prices that comply with the 1996 Act and the FCC's rules), albeit different from those in effect now. There is no legal basis for precluding that result, nor is there any public interest in doing so.

iii. Commission Review and Conclusion

789. WorldCom's proposal that the Commission-approved rates for "unbundled access" and "interconnection" be capped at current levels for a period of five years would not allow the Commission to take into account changed circumstances and, if enacted, might result in rates and/or charges that were no longer based upon applicable legal or regulatory requirements or standards. Therefore, we reject WorldCom's proposal in the course of this section 271 compliance investigation, and will not, on the record presented in this Cause, impose the requested rate cap.

a. Structural Separation

i. AT&T Position

790. AT&T contends that this Commission should require SBC Indiana to implement "structural separation" as a condition of a positive recommendation to the FCC. Under AT&T's proposal, the Company Comments, SBC Indiana would need to separate itself into a network company and a retail company, which would have to

obtain service from the network company. The network half would at first continue serving SBC Indiana's existing retail customers, but it could not serve new customers, could not serve any customers who changed locations and could not introduce new services. Over time, customers would be required to elect a new retail provider (either SBC Indiana's retail company or a CLEC).

ii. SBC Indiana Position

791. Structural separation, SBC Indiana asserts, is not required by the FCC as a condition of Section 271 approval. In the New Jersey Section 271 proceeding, SBC Indiana observes, the New Jersey Division of the Ratepayer Advocate ("NJDR") contended – just as AT&T does here – that Verizon's application was not in the public interest absent structural separation. SBC Indiana points out that the FCC rejected this proposal out-of-hand by stating:

. . . the Act [TA96] does not require structural separation as condition to Section 271 approval, and we do not require it here.
New Jersey 271 Order, ¶ 183.

792. Indeed, SBC Indiana asserts, structural separation is at odds with the 1996 Act. The methods Congress adopted to reach the goal of local competition are set forth in section 251 of the Act, and plainly assume that incumbent LECs such as SBC Indiana would act in both a wholesale and a retail capacity. Forced structural separation would interfere with the methods Congress relied upon to facilitate local competition, SBC Indiana maintains, and it would be particularly out of place here. This is a proceeding to carry out the 1996 Act, SBC Indiana argues, and not to discard it in favor of a regime preferred by AT&T.

793. So too, SBC Indiana contends, structural separation represents poor public policy. SBC Indiana explained that structural separation would be enormously complex to implement, would impose significant inefficiencies on the Company, would degrade the quality of both retail and wholesale services, and would be confusing to customers. Moreover, wholesale customers would see higher rates as a result of the restructuring.

iii. Commission Review and Conclusion

794. Structural separation is not a prerequisite to Section 271 approval, as the FCC stated in its New Jersey Verizon decision. Moreover, the Commission has had ample opportunity to review the need for structural separation of SBC Indiana through our own docket, Cause No. 41998. AT&T participated as a complainant in that case in which we issued an interim order on December 26, 2002. At the time we issued that order, we declined to order structural separation of SBC Indiana; however, we have since ordered SBC Indiana to implement a code of conduct. To date, SBC has not

submitted a satisfactory code of conduct and has not complied with our instructions in Cause No. 41998.⁶³ Cause No. 41998 is still awaiting final order.

Proposal No. 1 - Remedy Plan

a. Description

795. In this section, the Commission addresses the performance assurance or “remedy” plan (“SBC Indiana Section 271 Remedy Plan”) SBC Indiana proposes to help ensure that it will continue to meet its section 271 obligations after section 271 approval is granted. This assurance of continued compliance is relevant to the FCC’s decision that the BOC’s entry would be consistent with the public interest. New York 271 Order, ¶ 429.

b. Standards of Review

796. The FCC defined the characteristics of an effective performance assurance plan in its order approving the application under Section 271 by Bell Atlantic (now Verizon) to provide long-distance service in New York and then reaffirmed and applied these criteria in its orders approving Section 271 applications by SWBT for Texas, Kansas, Oklahoma, Arkansas and Missouri. The FCC has identified the following five criteria as the important characteristics of an effective performance assurance plan:

- (1) Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- (2) Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- (3) A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- (4) A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and,
- (5) Reasonable assurances that the reported data is accurate.

New York 271 Order, ¶ 433.

797. The FCC has stated that a remedy plan is not the only assurance of future compliance. Thus, a plan should not be evaluated as if it is the only evidence on that issue:

⁶³ Cause No. 41998, Second interim order (June 26, 2003).

We also believe that it is important to evaluate the benefits of these reporting and enforcement mechanisms in the context of other regulatory and legal processes that provide additional positive incentives to Bell Atlantic. It is not necessary that the state mechanisms alone provide full protection against potential anti-competitive behavior by the incumbent. Most significantly, we recognize that the Commission's enforcement authority under section 271(d)(6) already provides incentives for Bell Atlantic to ensure continuing compliance with its section 271 obligations.

Id. ¶ 430. Accordingly, the FCC has disagreed with the notion "that liability under the Plan must be sufficient, standing alone, to completely counterbalance [the applicant's] incentive to discriminate" because performance assurance plans "do not represent the only means of ensuring that Bell Atlantic continues to provide nondiscriminatory service to competing carriers." Id. ¶ 435.

c. SBC Indiana's Proposed "Compromise Plan" and the IURC's "SBC Indiana Section 271 Remedy Plan"

798. In its September 26, 2002 and March 14, 2003 filings, SBC Indiana described the development and principal features of the Compromise Plan. (SBC 9/26/02 Ehr Aff. ¶¶ 239-253; SBC 3/14/03 Ehr Aff. ¶¶ 214-234.) SBC Indiana states that Time Warner has agreed to the Plan, and that an interconnection agreement amendment reflecting the Compromise Plan has been approved by the Commission in Cause No. 40572-INB-162. According to SBC Indiana, the Compromise Plan retains the same basic structure, and many of the same elements, of plans approved by the FCC:

- The Compromise Plan is based on the same performance measures and standards to which the CLECs agreed in collaborative sessions, and the same measures and standards analyzed above.
- Periodic updates to the measures and standards are to be made through collaborative "six-month reviews."
- The Compromise Plan consists of two "tiers" of remedies: Tier 1 "liquidated damages" paid to CLECs, and Tier 2 "assessments" paid to the State.
- Statistical analysis is used to determine when remedies are to be paid by identifying whether the size and number of performance shortfalls are significant, or instead are small enough that they can be attributed to the random variation inherent in actual wholesale and retail performance.
- Most remedies are calculated by multiplying (i) the number of substandard transactions, or "occurrences", within the applicable performance measure, by (ii) a "base" liquidated damage or assessment amount. Some remedies are calculated by assessing a set "per measure" amount, as specified in the plan.

799. One provision of the Compromise Plan allows the participating CLEC to institute a “gap closure” process on measures that show shortfalls over three consecutive months. (SBC 3/14/03 Ehr Aff. ¶ 226.) In addition, the Compromise Plan contains a more stringent “step-down” provision, under which remedies escalate on a measure that shows shortfalls in consecutive months, but do not return to the normal amount until performance has shown improvement for two or three consecutive months (in contrast to the SWBT plans, which returns remedies to normal after the first month of compliant performance). (*Id.*)

800. According to SBC Indiana, the other principal difference from the SWBT plans lies in the “base amounts” that are to be assessed on each substandard occurrence. While the SWBT plans assess payments at the same amount regardless of overall performance, the Compromise Plan “indexes” individual payment amounts based on overall performance. (*Id.*) In other words, if the overall “pass rate” on performance measures reaches a sufficiently high level, the individual base amounts are reduced; conversely, the base amounts increase if the overall “pass rate” on performance standards falls below specified “index” rates. (*Id.*) The lowest base amount applies where SBC Indiana meets or exceeds 92 percent of its performance tests. (SBC 3/14/03 Ehr Aff. Attachment M.) The base amounts are progressively higher when the pass rate is 86-92 percent, 80-86 percent, 74–80 percent, and below 74 percent. (*Id.*)

801. SBC Indiana also presented a comparative analysis of payments “pro forma” for September 2002 results under (i) plans found sufficient by the FCC, using the SWBT Texas plan as a baseline, and (ii) the Compromise Plan. SBC Indiana claims that its analysis showed that the Compromise Plan would assess remedies of approximately \$185,000 –nearly double the amount that the Company claims has been found sufficient by the FCC.

d. Positions of the Other Parties

AT&T Position

802. AT&T's position is that the Commission should, as a condition of a favorable recommendation on section 271 approval, reject SBC Indiana's proposal and require SBC Indiana to implement the plan established by the Commission's order of October 16, 2002.

WorldCom Position

803. WorldCom agrees with AT&T that the Commission should require SBC Indiana to implement the plan established by the Commission's order of October 16, 2002, and further suggests that the Commission require SBC Indiana to drop its appeals from that order.

e. Commission Analysis and Conclusion

Imposition of Prior Commission-Ordered Plan

804. The CLECs' main position is that the Commission should order SBC Indiana to accept and implement the remedy plan established by this Commission's order of October 16, 2002. Since the CLEC Comments were filed, however, the federal district court for the Southern District of Indiana ruled on SBC Indiana's challenge and permanently enjoined that order. The court further held that the Commission had no authority to impose a remedy plan on SBC Indiana in this proceeding, absent SBC's agreement. As a result, whatever the merits of the Commission-ordered plan, it is clear that the Commission cannot impose that plan, in this proceeding, on SBC Indiana. . Conversely, the Commission observed in Cause No. 40572-INB-162 that it could not impose the Time Warner remedy plan amendment on CLECs that did not agree to opt into it.

805. As the federal court held, the issue for purposes of this proceeding is whether the plan proposed by SBC Indiana is sufficient for purposes of section 271, and the Commission's role is to advise the FCC on that issue. The Commission proceeds to that issue below.

Status of Compromise Plan and SBC Indiana Section 271 Remedy Plan

806. The Commission noted in its Order approving the Time Warner amendment in Cause No. 40572-INB-162 that its approval of the Compromise Plan as a voluntarily negotiated agreement would not constitute precedent in this proceeding (Cause No. 41657). And in this proceeding, the Commission denied SBC Indiana's request for reconsideration of the October 16, 2002 order establishing a plan that was developed by the Commission, and in so doing the Commission declined to adopt a plan offered by SBC Indiana that was similar to the Compromise Plan proposed here.

807. The Compromise Plan would assess remedies using the lowest "index" level, the one that corresponds to performance at or above 92 percent. If SBC Indiana's overall performance were to decline from the current 92-100 percent index value, remedies would increase— not only because SBC Indiana would pay remedies on more measures, but also because the amount of each payment would increase across the board.

808. On July 2, 2003, subsequent to the decision of Judge Larry J. McKinney (Chief Judge of the U.S. District Court for the Southern District of Indiana) that the IURC's role in this proceeding is purely advisory and that it cannot impose a remedy plan upon SBC Indiana with which the Company does not agree, the Commission issued a Compliance Order in Cause No. 41657. The Commission said that its support for SBC Indiana's 271 application before the FCC would be contingent upon SBC's agreeing to certain modifications to the SBC-Time Warner remedy plan amendment, among other things. This modified version is now entitled the "SBC Indiana Section 271 Remedy Plan". The modifications to the Time Warner Amendment included:

- "The plan is under the oversight and control of the IURC; agreed-upon or disputed proposals for modifications to the SBC Indiana Section 271 Remedy Plan or the PM User Guide must be approved by the IURC in order to take effect."
- "Proposed modifications by a party or parties to: (1) the SBC Indiana Section 271 Remedy Plan, (2) any attachments to that Plan, and/or (3) the SBC Midwest Performance Measure User Guide should first be raised in the regional six-month review meetings, or in Indiana-specific performance measure or remedy plan collaborative workshops or conference calls prior to the party or parties seeking approval of the modifications from the IURC. This does not preclude the IURC ordering, or the IURC staff requesting, on its own motion, changes to the PM User Guide [footnote omitted]."
- "The SBC Indiana Section 271 Remedy Plan shall be available for adoption by any CLEC pursuant to Section 252(i) of TA-96."
- "The term of the SBC Indiana Section 271 Remedy Plan is indefinite. Expiration of the SBC Indiana section 271 Remedy Plan shall require approval by the IURC."

With the exception of these four modifications, the provisions of the Time Warner Amendment identified above are also included in the SBC Indiana Section 271 Remedy Plan. It is important to note that the SBC Indiana Section 271 Remedy Plan is approved solely in the context of Section 271, does not go beyond what SBC has agreed to implement⁶⁴, and "does not preclude a CLEC from seeking to negotiate, or the [IURC] from approving, a different remedy plan or performance assurance plan with/for SBC Indiana, pursuant to Sections 251 and 252 of TA-96, as described under the recent decision of Judge Larry J. McKinney, Chief Judge of the U.S. District Court for the Southern District of Indiana."⁶⁵

809. On July 11, 2003, SBC Indiana filed its Report of SBC Indiana on Issues Identified in the July 2, 2003 Compliance Order, indicating its agreement to the IURC's conditions, including its acceptance of the SBC Indiana Section 271 remedy plan, each of the IURC's modifications to the Time Warner amendment for Section 271 purposes, and all of the Commission's terms and conditions in the July 2 Compliance Order. On August 1, SBC Indiana filed SBC Indiana Filing Correcting Certain Compliance Plans And Revising July 18, 2003 Pricing Filing clarifying its acceptance of certain language in the July 2 Attachment One and corrected certain clerical errors.

FCC Characteristic No. 1: Meaningful Incentive

⁶⁴ Indiana Bell Telephone Company, Incorporated, Plaintiff, vs. Indiana Utility Regulatory Commission; AT&T Communications Of Indiana, GP; TCG Indianapolis; MCLEODUSA Telecommunications Services, Inc; WORLDCOM, Inc.; Z-TEL Communications, Inc.; Indiana Office Of Utility Consumer Counselor, Defendants and Intervenor-Defendants, Order on Cross-Motions for Summary Judgment, 2003 U.S. Dist. So. Ind., LEXIS 6452 (Section III.D., 23, 24) March 11, 2003, Decided.

⁶⁵ IURC Cause No. 41657, Compliance Order, "Attachment One", 4, n. 10 (July 2, 2003).

810. The Commission finds that, in the context of Section 271, the SBC Indiana Section 271 Remedy Plan provides a meaningful incentive for SBC Indiana to provide wholesale service to its competitors at the levels required by the performance measures and thus satisfies FCC Characteristic No. 1 referenced above. Simply put, the proposed remedy plan is designed to assess remedies where there is sufficient evidence of a disparity between wholesale performance and the applicable standard, to increase payments as performance worsens, and to reduce payments as performance improves. That provides the proper incentive to maintain a high level of performance and to institute improvements should performance fall below the agreed-upon standards. The initial potential financial exposure to SBC Indiana (up to 36 percent of net return) is significant. Texas 271 Order, ¶ 424; Kansas & Oklahoma 271 Order, ¶ 274; Arkansas & Missouri 271 Order, ¶ 130.

811. First, SBC Indiana proposes to “index” liquidated damages amounts so that remedies for individual performance shortfalls increase if overall performance worsens. Second, the SBC Indiana Section 271 Remedy Plan gives CLECs the opportunity to request a “gap closure” process to address any persistent shortfalls in performance. Third, the SBC Indiana Section 271 Remedy Plan would continue to “escalate” remedy amounts if a performance standard is missed in consecutive months, and it will also keep the remedy amounts at an escalated level until the applicable standard is met for two or three consecutive months. Fourth, the cap on remedy payments has been changed from a “hard” cap to a procedural threshold, calling for a Commission proceeding to be initiated if SBC Indiana’s remedy payments exceed the threshold.

FCC Characteristic No. 2: Clearly Articulated Standards

812. There is no dispute regarding the performance measures and standards included in SBC Indiana’s SBC Indiana Section 271 Remedy Plan. These measures and standards, and the rules for calculating them, were defined by agreements reached after extensive negotiations with CLECs in performance measurement collaboratives throughout the region. These measures and standards were established by mutual agreement in collaborative sessions, and they were modified by mutual agreement in subsequent “six-month review” sessions.

FCC Characteristic No. 3: Reasonable Structure

813. The plan uses the same structure approved by the FCC in the Texas 271 Order (¶ 426), the Kansas & Oklahoma 271 Order (¶ 276) and the Arkansas & Missouri 271 Order (¶¶ 129-130). Most of the modifications here concern the numbers that go into the remedy calculations, not the structure of the plan or the steps involved in calculating remedies. The basic principle remains the same: Each month SBC Indiana’s actual performance is mathematically determined for each individual performance measurement result. Each of these results is then compared to an objective standard for that measurement, using accepted statistical techniques, as required by FCC Characteristic 3 referenced above. If the comparison shows that SBC Indiana did not

provide the required level of service, remedy payments will be calculated pursuant to the methodology detailed in the performance remedy plan.

FCC Characteristic No. 4: Self-Executing Mechanism

814. “Remedy” payments in SBC Indiana’s proposed SBC Indiana Section 271 Remedy Plan are self-effectuating payments that are undertaken on a voluntary basis and directly relate to objective, agreed-upon measurements. Payments under these plans are automatic, and the FCC has found them to be sufficiently self-effectuating. There is an expedited procedure that allows the Commission to waive remedies if it finds that a particular performance shortfall was caused by some factor outside the control of SBC Indiana (for example, a CLEC error, or a natural disaster). The FCC has found such a procedure to be sufficiently self-executing for purposes of Characteristic No. 4. Texas 271 Order, ¶ 427; Kansas & Oklahoma 271 Order, ¶ 277; Arkansas & Missouri 271 Order, ¶¶ 129-130.

FCC Characteristic No. 5: Accurate Data

815. As described in Section V.A, SBC Indiana’s performance measurements have been audited, and are also being assessed as part of BearingPoint’s ongoing third-party OSS test. For audits going forward, the proposed SBC Indiana Section 271 Remedy Plan adds a provision for a comprehensive regional audit to be conducted eighteen months after either adoption of the remedy plan or completion of the current BearingPoint audit. In addition, the SBC Indiana Section 271 Remedy Plan includes a provision for CLECs to request an independent “mini-audit” to address disputes on specific measurements or results.

Floors and Ceilings

816. Section 8.4 of the SBC Indiana Section 271 Remedy Plan provides for “floors and ceilings” for certain measures. The “floor” means that if SBC Indiana performance for that CLEC is worse than that level, it will be deemed a performance shortfall even if the measure was in parity. The “ceiling” means that if SBC Indiana performance is better than that level, it will not be deemed a performance shortfall even if there is some minor disparity between wholesale and retail.

817. Indeed, in several places the Commission has noted that point in its analysis of checklist compliance. The floors and ceilings apply only to certain measures, to be established by collaborative agreement. Even for those measures, the standard of comparison on these performance measures would still be parity at most levels of performance. The “floor” or “ceiling” benchmark comparison would apply only when service provided to the CLEC is at very high or very low levels.

Periodic Audits

818. The Commission adopts SBC Indiana’s proposal for periodic audits. The SBC Indiana Section 271 Remedy Plan specifies that the initial audit would begin eighteen months after the later of approval of the Compromise Remedy Plan or the

conclusion of the BearingPoint PMR test. Beyond that, periodic audits would be scheduled as deemed necessary by the Commission. Given that SBC Indiana has already undergone one audit (by E&Y) and is now undergoing a comprehensive test of performance metrics by BearingPoint, the 18-month proposal is reasonable.

819. In addition, the Commission agrees with SBC Indiana's proposal that audits be conducted on a regional basis, with the auditor proposed by SBC and approved by the various commissions. SBC Midwest's regionwide OSS and performance measures give CLECs the benefit of uniformity in providing service across states. The commissions in all five SBC Midwest states can take similar advantage of these regionwide measures and systems and coordinate an efficient process.

Proposal No. 2 - Special Access

a. Time Warner Position

820. Time Warner says that special access services are "functionally equivalent" to UNEs (DS1 and DS3 loops and combinations of loops with UNE transport), but competitors order from the special access services rather than UNEs because the ordering and provisioning process is easier and faster. Accordingly, Time Warner asks the Commission to adopt a new set of "Special Access" UNEs, complete with performance measures and remedies.

b. SBC Indiana Position

821. SBC Indiana contends that Time Warner's complaints about special access performance are unfounded, as SBC Indiana claims it has significantly improved procedures in this area. (SBC 1/8/03 Foster Reply Aff. ¶¶ 5-6.)

822. Further, SBC Indiana states, Time Warner's proposal is out of place. The purpose of this proceeding is to evaluate compliance with the checklist. SBC Indiana points out that this Commission has already properly held that special access is not a checklist issue, in rejecting Time Warner's attempt to add special access issues to the Master Test Plan. Aug. 8, 2001 Order, at 6; SBC 1/8/03 Butler Reply Aff. ¶¶ 13-15. Likewise, the FCC has repeatedly held that "special access" is *not* part of any checklist item. See, e.g., Texas 271 Order, ¶ 335 ("[W]e do not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance.") In so doing, the FCC addressed and rejected Time Warner's contention here, that special access should be considered a checklist item because some CLECs decide to use it in lieu of checklist items like unbundled loops and transport. Id. ("The fact that the competitive LECs can use interstate special access service in lieu of the EEL, a combination of unbundled loops and transport, and can convert special access service to EELs, does not persuade us that we should alter our approach and consider the provision of special access for purposes of checklist compliance."). See also New York 271 Order, ¶ 340 ("We cannot accept the assertion by a number of these parties that the provision of special access should be considered for purposes of determining checklist compliance in this proceeding. . . . We have never considered the provision of

interstate access services in the context of checklist compliance before.”). The FCC has recently reiterated that “the provision of interstate access services is not a checklist compliance item.” Connecticut 271 Order, ¶ 50. The FCC has further refused to consider the provision of special access services as part of its public interest requirement. See New York 271 Order, ¶ 340, n.1052.

c. Commission Analysis and Conclusion

823. The Commission reiterates its prior holding that special access services are not relevant to the competitive checklist of section 271, and rejects Time Warner’s proposal. This does not preclude the IURC from considering special access performance measures or other issues related to special access in another proceeding or in another context.

Proposal No. 3 - “Winback” Marketing.

a. Time Warner Position

824. Time Warner contends that the Commission should conduct “further investigation” into SBC Indiana’s efforts to compete and “win back” customers that switch to its competitors.

b. SBC Indiana Position

825. SBC Indiana notes that the Commission has already heard evidence and received proposed orders and comments – and Time Warner is a party to that case. SBC Indiana contends that this is not the place to open a new investigation. The only basis Time Warner offers for such an investigation is that SBC Indiana “prefers to retain” retail customers rather than giving them away to competitors. As noted by SBC Indiana, the desire to compete is far from anticompetitive; all competitors desire to win and retain customers, and all competitors desire to make a profit. That is one of the primary ways that consumers benefit from a competitive marketplace.

c. Commission Analysis and Conclusion

826. The Commission rejects Time Warner’s proposal for an investigation on winback activities, in light of the pending investigation in Cause No. 42218. Time Warner participated as an active party, indeed as a Complainant, in Cause No. 42218, which is currently pending before the commission for decision. Time Warner has not convinced us that Winback issues cannot be adequately reviewed and resolved in the context of Cause No. 42218. Thus, we reject Time Warner’s arguments and requests for a Winback investigation in Cause No. 41657. This does not preclude the IURC from considering winback issues in Cause No. 42218 or elsewhere.

F. SBC Corrective Actions and Commitments

827. On July 11, 2003, SBC Indiana filed certain Compliance and Improvement Plans that had been filed with the Michigan Public Service Commission (“MPSC”) in

MPSC Docket No. U-12320.⁶⁶ SBC Indiana advised the parties of its intent to import these improvement plans to Indiana upon conclusion of the Michigan review process of these plans. On August 1, 2003, SBC Indiana filed revised versions of three of the plans to correctly reference the applicable state (Indiana). SBC Indiana also filed a clarification of SBC Indiana's acceptance of two provisions in the Commission's July 2 Compliance Order.⁶⁷

828. SBC Michigan proposed seven compliance and improvement plans in response to the MPSC's January 13, 2003 Opinion and Order in Docket U-12320, and based on subsequent industry collaborative discussions. Specifically, on March 13, 2003, SBC Michigan filed three "compliance" plans for which SBC has proposed a third party (i.e., BearingPoint) to review. These compliance plans address the following areas:

- (1) Customer Service Inquiry ("CSI") Accuracy
- (2) Directory Listings and Directory Assistance ("DL/DA") Database Update Accuracy
- (3) Special and UNE Circuit Repair Coding Accuracy

829. SBC also filed four "improvement" plans which are not subject to third party review, but for which SBC will provide status or progress updates periodically. These improvement plans address the following areas:

- (1) Line Loss Notifier Communications
- (2) Change Management Communications
- (3) Pre-Order Processing Timeliness
- (4) Billing Auditability and Dispute Resolution

830. In Michigan, the subjects of the three compliance plans (CSI accuracy (OSS Test Point TVV4-27), DL/DA database update accuracy (OSS Test Point TVV4-1), and special and UNE circuit repair coding accuracy (OSS Test Point TVV 7-14)) were noted as "not satisfied" in the BearingPoint OSS test evaluation issued on October 30, 2002. Since that time the plans have been further modified. SBC Indiana has provided a redlined copy reflecting the changes from the plans filed on March 18, 2003.

⁶⁶ MPSC Docket No. U-12320 is the proceeding in which the MPSC investigated SBC Michigan's compliance with the competitive checklist requirements of Section 271. The MPSC issued its Report and an Opinion and Order in that proceeding on January 13, 2003 finding that SBC Michigan was in current compliance with each of the 14 checklist items.

⁶⁷ IURC Cause No. 41657, SBC Indiana Filing Correcting Certain Compliance Plans and Revising July 18, 2003 Pricing Filing (August 1, 2003).

831. In contrast to Michigan, two of the three compliance issues, CSI Accuracy and DL/DA Accuracy, were evaluated as "satisfied" in the BearingPoint Indiana Report issued on February 28, 2003. Similarly, BearingPoint's review of UNE repair coding was found satisfactory, and only repair coding for special circuits was identified as being not satisfied. Accordingly, with the exception of repair coding for special circuits, SBC Indiana does not believe that Indiana-specific compliance plans on these issues are warranted based on current performance and BearingPoint's OSS test results. SBC Indiana is willing, however, to provide copies of the regional results associated with these compliance plans to the Indiana Commission and parties to the Indiana 271 docket. In regards to special circuit repair coding, SBC Indiana would be agreeable to a compliance plan for this issue under the same terms and conditions as outlined in Michigan plan (for special circuits only).

832. Similarly, SBC is willing to address each of the improvement plans on a regional basis and provide status reports to the Indiana Commission and parties to the Indiana 271 docket. As a result of the filing of these compliance and improvement plans, the Commission and CLECs doing business in Indiana can be assured of receiving the same benefits from these plans as will parties to the Michigan proceeding.

833. Like SBC Michigan, SBC Indiana believes that it has demonstrated that it is in current compliance with each of Section 271 competitive checklist items, including each of the areas addressed in the attached compliance and improvement plans. As represented in filings made with the MPSC and the FCC, these proposals are submitted to improve and enhance SBC's current performance; SBC Indiana believes they are not needed to satisfy the legal requirements of Section 271. Rather, SBC Indiana asserts they are concrete examples of SBC's willingness to continue to work collaboratively with the industry to address CLEC requests for improvements to its OSS interfaces, processes and procedures.

G. Pricing and Costing Issues

834. The 41657 Price List-1, -2 and -3 to the May 9, 2003, IURC docket entry reflects then current pricing for SBC Indiana products and services. However, the interconnection agreement to which those lists were attached was negotiated and agreed to prior to the Commission's February 17, 2003, Order in Cause No 40611 S1 (Phase 2). Pricing is subject to revision based on changes in law and new orders, as well as the negotiation of the parties. For example, parties may negotiate a lower price for certain services or a different type of service for a higher price and this would be reflected in their interconnection agreement. Any pricing appendix will represent a snapshot of the then current rates and the negotiations of the parties. Attached, as Appendix 2, is a document that purports to reflect the rates and charges upon which SBC Indiana is relying in its Section 271 application to the FCC, as of August 1, 2003.

835. The applicable statutory and FCC pricing and costing standard for each checklist item have been set out in the appropriate checklist item section above and are summarized as follows:

Checklist Item 1: Interconnection

837. The incumbent LEC must provide interconnection “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252.” California 271 Order, App. C ¶ 17. Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit. Id. ¶ 21. The FCC’s pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC. Id. To the extent pricing disputes arise, the FCC will not duplicate the work of the state commissions. Id. ¶ 22. The Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law. Id. Although the FCC has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions. Id.

Checklist Item 2: Access to Network Elements

838. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act. California 271 Order, App. C, ¶ 45. Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.” Id. Section 252(d)(1) requires that a state commission’s determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit. Id. Pursuant to this statutory mandate, the FCC has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements. Id. The FCC also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request. The FCC has previously held that it will not conduct a *de novo* review of a state’s pricing determinations and will reject an application only if “basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.” Id.

Checklist Item 3: Poles, Ducts, Conduits, and Rights-of-Way

839. Section 271(c)(2)(B)(iii) requires BOCs to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights- of- way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224.” California 271 Order, App. C, ¶ 47. Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for “pole attachments.” Id.

Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are “just and reasonable.” *Id.* Notwithstanding this general grant of authority, section 224(c)(1) states that “[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights- of- way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by the State.” *Id.* As of 1992, nineteen states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments. *Id.*

Checklist Item 4: Unbundled Local Loops

See Checklist Item 2.

Checklist Item 5: Unbundled Local Transport

See Checklist Item 2.

Checklist Item 6: Unbundled Local Switching

See Checklist Item 2.

Checklist Item 7: Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services

840. Although the FCC originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, it removed directory assistance and operator services from the list of required UNEs in the *UNE Remand Order*. *California 271 Order*, App. C, ¶ 58. Checklist item obligations that do not fall within a BOC’s obligations under section 251(c)(3) are not subject to the requirements of sections 251 and 252 that rates be based on forward-looking economic costs. *Id.* Checklist item obligations that do not fall within a BOC’s UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory. *Id.*

Checklist Item 11: Number Portability

841. The FCC has created a competitively neutral cost-recovery mechanism for long-term number portability. *See* 47 C.F.R. §§ 52.32, 52.33

Checklist Item 13: Reciprocal Compensation

842. Pursuant to section 252 (d)(2)(A), “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and (ii) such

terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.” California 271 Order, App. C, ¶ 66.

Checklist Item 14: Resale

843. Section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” California 271 Order, App. C, ¶ 67. Section 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” Id.

VII. Enforcement Issues

844. For the benefit of the FCC, we want to describe our limited enforcement authority in Indiana. The Arkansas Commission and the Department of Justice raised the issue in their respective comments to the FCC in the Arkansas/Missouri 271 proceeding. Specifically, the Arkansas Commission strongly suggested that the FCC consider including potential anti-backsliding provisions given its limited legal authority to ensure future performance.⁶⁸ The DOJ suggested that performance problems may occur after section 271 approval in Arkansas because of the limited enforcement authority of the Arkansas Commission.⁶⁹ The FCC acknowledged that it had previously explained that one factor it may consider as part of its public interest analysis is whether a BOC would continue to satisfy the requirements of section 271 after entering the long distance market.⁷⁰ Accordingly, the FCC has strongly encouraged state commissions to conduct performance monitoring and post-entry enforcement. The FCC, in a footnote, stated that these mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6).⁷¹

845. The FCC further stated that it disagreed with commenters that submitted that the Arkansas Commission may have insufficient legal authority to effectively enforce the plan and ensure that SWBT will continue to provide nondiscriminatory service to competing carriers. “Based on the Arkansas Commission's precedent, we

⁶⁸ Arkansas Commission Comments at 12. *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, Memorandum Opinion and Order, FCC 01-338 (rel. Nov. 16, 2001)(SBC Arkansas/Missouri Order) ¶ 8.

⁶⁹ Department of Justice Evaluation at 12. SBC Arkansas/Missouri Order ¶ 9.

⁷⁰ Arkansas/Missouri Order ¶ 127

⁷¹ Arkansas/Missouri Order ¶ 127 n 404.

conclude that the Arkansas Commission has demonstrated sufficient authority to implement and enforce the plan in Arkansas, assuring that local markets will remain open after SWBT receives section 271 authorization."⁷²

846. However, there is a unique situation in Indiana. SBC appealed the Indiana order approving a performance assurance and remedy plan to the US District Court. As suggested above, the decision issued by Judge McKinney⁷³ granted injunctive relief to SBC and enjoined the IURC from enforcing the Performance Assurance and Remedy Plan orders. The opinion states that the IURC has the authority to approve or order remedy plans pursuant to Section 252 but not Section 271.⁷⁴ The opinion states that Ameritech's submission of a proposed remedy plan in the context of a 271 Application proceeding "does not authorize the IURC to order a different remedy plan" than what SBC Indiana had proposed in that proceeding.⁷⁵ It states, "Perhaps Ameritech offered to be subject to certain benchmarks and penalties because it believed that would cause the IURC to make a favorable recommendation to the FCC or would cause the FCC to be more likely to grant Ameritech interLATA authority. By choosing that path, Ameritech risked whether CLECs and the IURC would agree to its proposal, and because they did not agree, Ameritech now risks that the FCC may deny its 271 Application on the basis that it is not convinced Ameritech will continue to meet its obligations. But the IURC is not authorized to impose a plan under the guise of a Section 271 proceeding that should be developed through the standards and processes outlined in Sections 251 and 252. Section 271 clearly contemplates an advisory role for the IURC, not a substantive role."⁷⁶

847. By casting the IURC's role under Section 271, generally, as advisory, rather than substantive, Judge McKinney's decision appears to limit the IURC's enforcement abilities in this proceeding for more than just the Section 271 remedy plan. The IURC is aware that the FCC has stated in more than one Section 271 Order that it intends to work in concert with the state commissions and to closely monitor post-approval compliance to ensure that the Bell Operating Company does not cease to meet any of the conditions required for [section 271] approval. The FCC has stated it stands ready to exercise its various statutory enforcement powers quickly and decisively

⁷² Arkansas/Missouri Order ¶ 131.

⁷³ Indiana Bell Telephone Company, Incorporated, Plaintiff, vs. Indiana Utility Regulatory Commission; AT&T Communications Of Indiana, GP; TCG Indianapolis; MCLEODUSA Telecommunications Services, Inc; WORLDCOM, Inc.; Z-TEL Communications, Inc.; Indiana Office Of Utility Consumer Counselor, Defendants and Intervenor-Defendants. Order on Cross-Motions for Summary Judgment, 2003 U.S. Dist. So. Ind., LEXIS 6 52 March 11, 2003, Decided.

⁷⁴ *Id.*, see, e.g., pp. 12, 16, 19, 23, 24.

⁷⁵ Indiana Bell Tel. Co. v. IURC; AT&T; et al.; Order on Cross-Motions for Summary Judgment, Section III.D., p. 23.

⁷⁶ Indiana Bell Telephone Company, Incorporated, Plaintiff, vs. Indiana Utility Regulatory Commission; AT&T Communications Of Indiana, GP; TCG Indianapolis; MCLEODUSA Telecommunications Services, Inc; WORLDCOM, Inc.; Z-TEL Communications, Inc.; Indiana Office Of Utility Consumer Counselor, Defendants and Intervenor-Defendants, Order on Cross-Motions for Summary Judgment, 2003 U.S. Dist. So. Ind., LEXIS 6452 (Section III.D., 23, 24) March 11, 2003, Decided.

in appropriate circumstances to ensure that the local market remains open and that it is prepared to use its authority under section 271(d)(6) if evidence shows market opening conditions have not been maintained.⁷⁷ The FCC has also stated "We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to SWBT's entry into the Arkansas and Missouri long distance markets."⁷⁸

848. The FCC language discussed above yields some assurance to the IURC of the FCC's willingness to work with the states. However, the lack of state enforcement authority, coupled with the additional restrictions from Judge McKinney's decision, leads the IURC to request additional assistance with enforcement of the remedy plan and the compliance and improvement plans, and certain other issues, as set forth herein, than what the FCC has previously contemplated in other Section 271 proceedings. Additionally, the Indiana Commission, in contrast to other SBC Midwest state commissions that do have separate enforcement ability, believes the compliance and improvement plans filed in Indiana are a necessary element to the IURC's positive recommendation in this Cause. Thus, the IURC's circumstances and level of enforcement authority are distinguished from those of both the Arkansas Commission and at least some of the other commissions in the SBC Midwest region.

849. For all the foregoing reasons, the IURC respectfully requests that the FCC continue its policy of working in concert with the states and provide assistance on enforcement in order to preserve a meaningful competitive environment envisioned by the Telecommunications Act of 1996. We are asking for this assistance in regards to enforcement of the SBC Indiana Section 271 Remedy Plan, the SBC Indiana Compliance and Improvement Plans, and various billing, OSS, change management, JTE, and performance measure and data reliability issues, as described more fully herein.

VIII. THE COMMISSION'S FINDINGS IN THIS REPORT AND RECOMMENDATION

850. On the whole of the record for this proceeding established by the Order and Docket Entries discussed above, the Commission finds as follows:

1. SBC Indiana satisfies Section 271 (c)(1)(A) of the Telecommunications Act of 1996, to the extent the FCC determines that the uncertainty caused by SBC's challenges to our legal authority to order it to file a UNE tariff does not constitute or cause a lack of a "concrete and specific legal obligation [by SBC] to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each

⁷⁷ Arkansas/Missouri Order ¶ 138

⁷⁸ Arkansas/Missouri Order ¶ 139

checklist item⁷⁹ for those UNEs and rate elements for which SBC is relying on tariffs to support its application.⁸⁰

2. With respect to the provisions of Section 271 (c)(2)(B), our individual assessments as regard these many matters, indicates that SBC Indiana is in compliance with checklist items (i) through (xiv), except as noted above, and to the extent the FCC determines that the incomplete status of the BearingPoint Performance Audit ("PM Audit"), certain problems BearingPoint has discovered during the course of the PM Audit, and certain anomalies and inconsistencies in the three months of commercial results that SBC filed with the IURC for November and December, 2002, and January, 2003, do not call into question SBC's having met the statutory nondiscrimination requirements in Section 271 and the FCC's "meaningful opportunities to compete" requirements and do not affect or call into question the commercial results that SBC Indiana has filed with the FCC for a different set of three months.
3. We have referred a number of issues (billing, OSS, change management/JTE, performance measure and data and other problems discussed above) to the FCC for resolution and /or enforcement – either because we could not reach a conclusion, based upon the record before us; because, pursuant to Judge McKinney's decision, we lack authority to order SBC Indiana to undertake corrective actions that it has not already agreed to undertake; or both.
4. SBC's August 1, 2003 revised compliance filing complies with our July 2 Compliance Order. We do, however, request FCC assistance in ensuring and enforcing SBC Indiana's full and ongoing compliance with the Commission's July 2, 2003 Order.
5. In light of the March 11, 2003, decision from the U.S. District Court for the Southern District of Indiana overturning the Commission's October 16, 2003, Order (and the associated SBC Indiana Performance Assurance and Remedy Plan) and foreclosing the IURC from imposing a remedy plan upon SBC in a Section 271 proceeding with which SBC did not agree, the IURC believes that SBC Indiana's agreed-to "SBC Indiana Section 271 Remedy Plan" is adequate to satisfy the FCC's requirements for a post-approval "performance assurance plan" in the context of Section 271, provided the FCC can provide concrete, public assurances that it will assist the IURC in enforcing SBC's implementation of, and compliance with that 271 remedy plan.

⁷⁹ Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan, CC Docket No. 97-137 (FCC 97-298), Para. 110 (Aug. 10, 1997) ["Ameritech Michigan Order"]

⁸⁰ Cause No. 41657, SBC Cross Reference Matrix (Nov. 18, 2002).